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MEETING RE: CHILD SUPPORT

BY: GOVERNOR'S COMMISSION OF CHILD SUPPORT

BEFORE: CATHERINE M. DUNHAM, DIRECTOR
Governor's Office of Human Resources
Room 109, State House
Boston, MA 02133

PLACE: 43 Mt. Vernon Street
Boston, MA 02108

DATE: September 11, 1985

TIME: 8:30 a.m.

GOVERNMENT DOCUMENTS
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1 MS. CONNIE WILLIAMS: I am
2 passing around two sheets. You will notice
3 everyone's name is typed who is a member of the
4 Commission. I have already marked present all
5 the persons who I could identify as being here.
6 I may have missed somebody. On the attendance
7 list, there is a place for a substitute, if you
8 are here substituting for a commissioner, I want
9 you to write your name if you are doing that.
10 Persons who are neither substituting for
11 commissioners, or who are not Commission
12 members, I want their names on a separate sheet.
13 That sheet is coming around, as well. It states
14 person in attendance, and your affiliation, so
15 these two yellow sheets will be going around.
16 CHAIRPERSON CATHERINE M.DUNHAM:
17 Thank you very much. On that procedural note,
18 we should launch our discussion. I want to
19 thank you all for coming on this gorgeous
20 Saturday morning, and also to say that in the
21 spirit of practicing what we preach, the
22 Commission spends a lot of time talking about
23 performance base system that comes out with the
24 proper result, whether it's expedited process or

1 guidelines and/or a number of other improvements
2 to the system that are perormance oriented.
3 We are going to reward
4 performance this morning by the fastest we gain
5 consensus, the earlier we leave here.
6 On a serious note, I want to
7 say that we have a large amount of work to go
8 over this morning, but it's nice to talk to
9 individual Commission members and subcommittee
10 chairs, that we have made a lot of progress in
11 terms of going over some of the details in
12 coming very close to agreement. There are a
13 number of issues that need to be explained in
14 detail, like the Master system, as well as some
15 finding the Commission arrived at, so that the
16 recommendations to the Governor can be drafted
17 and submitted.
18 As we are all very well aware,
19 we are on parallel tracks with legislation, so
20 we will be -- anything that comes to the point
21 of vote today, or needs to come to the point of
22 vote, will, so that we can record the sensitive
23 Commission formally on issues where there may be
24 disagreement. We don't discourage disagreement.

1 We just hope that we can -- we will gather as
2 much consensus and then reflect the sense of the
3 Commission accurately, both to the Governor on
4 our recommendatons and to the legislature,
5 around those parts of the Commission's
6 recommendations that relate to legislation.
7 There is, obviously, broader
8 mandates to this Commission than simply coming
9 into compliance with the federal law or
10 tailoring our findings to the in thes of the
11 legislation.
12 In that spirit, I also want to
13 invite the Commission to sit for another three
14 months at minimum to discuss the implementation
15 of the policy recommendations that we are voting
16 on this morning. I say three months, because I
17 know I had made a contract with many of you that
18 if we worked hard, this really would end October
19 1st. In fact, it will end. We really urge your
20 participation after that date because I think
21 your implementation is an important policy, but
22 in fact we still have a number of issues to
23 discuss, and I want the input of the Commission
24 in the further refinement of the plans to

1 implement. Some of those discussions pertaining
2 to recommendations will go on well into 1987.
3 Can I have a sense from the
4 Commission about the willingness to continue for
5 three months to talk about implementation?
6 MR. BARRY WALKER: Sure. It
7 seems to me that if we are going to do our job
8 effectively on the first date, it would be silly
9 not to proceed on the second date.
10 CHAIRPERSON CATHERINE DUNHAM:
11 Thank you. We will reconvene first off to
12 discuss implementation. Let me explain the
13 process because we are under such a tight
14 deadline of the writing of the report, so that
15 everyone can be clear. Connie will take
16 responsibility in my office for supervising the
17 drafting of that report. We will in very, very
18 fast fashion circulate that for response, almost
19 concludecurrent with the deadline for submitting
20 it to the Governor. So we will expect written
21 response to us, if there are any corrections
22 that need to be made by the October 1st deadline
23 so that we can submit the report to the Governor.
24 The -- as I said, the form of

1 that report and the substance of the work of the
2 subcommittees are all going to be resources in
3 the continuing discussion of both the
4 legislative and administrative response to this
5 problem. A moment just to talk about the
6 mission of this Commission.
7 We started at the months ago?
8 MS. CONNIE WILLIAMS: No.
9 It's only been nine. We started in January.
10 CHAIRPERSON CATHERINE DUNHAM:
11 Nine months ago. We are full term now.
12 (Laughter.)
13 CHAIRPERSON CATHERINE DUNHAM:
14 We were in full support of the results of the
15 child of this Commission. We have started this
16 work, and we will finish it in the interest of
17 improving the system to ensure that children who
18 find themselves in a divorce situation are not
19 the victims of that divorce situation, or the
20 lack of a parent does not guarantee they are
21 poverty. The system that we are trying to
22 improve, first and foremost, has to get
23 underneath and behind the needs of the
24 Commonwealth whose poverty is growing at a rate

1 that is shameful for a state that is doing as
2 well as we are.
3 We are confident, and now more
4 confident after nine months of work with this
5 group, that that system can be improved and will
6 be improved, even beyond the scope of what is
7 required of federal law. The study that was
8 done -- the needs of children -- It is the most
9 important condition of this group. Secondary
10 gains are approved, either to the state system
11 or to the individual participant in the system
12 of child support enforcement are just that.
13 They are important. They will help us sell this
14 in terms of money that can be saved, and earned
15 by various parts of the system, but they are
16 secondary to political considerations or this
17 group are secondary. We have -- you know, the
18 minute we make our policy recommendations, we
19 have to think about them in terms of
20 recommendations, but the recommendation should
21 be based on our committment to improving the
22 system, to make sure there are less poor
23 children in the Commonwealth.
24 As we said, this is a very

1 complicated and very painful problem, which is
2 not, -- this Commission is not the only group
3 that's addressing the problems from divorce and
4 separation in this Commonwealth. There will be
5 elements of what we recommend, which will not be
6 the end-all, be-all to the problems of divorced
7 and separated families. We didn't expect that,
8 but I do expect, and I am now confident that we
9 are going to come to some conclusions that will
10 take us into a leadership role in the country in
11 a way that's much more substantive than just
12 counting our child support collections that are
13 relative to other states.
14 MS. RUTH-ARLENE HOWE: Excuse
15 me, Madam Chairman, if I could express my
16 appreciation for that context, which is setting
17 forth this morning, because it's one of the
18 things that I have been wrestling over since we
19 were together last Wednesday, was just what was
20 our function? It seems to me that we have been
21 called together as a representative by the
22 citizens of (inaudible). After having going
23 through the process that we've all committed
24 ourselves to this morning of looking at all

1 kinds of material, wrestling with all the
2 available data, that it is our responsibility to
3 come to the very best recommendations that we
4 can fashion with regard to improving the
5 constituency you've been called together, and
6 that is children. I do not think it's
7 appropriate for us to sit as though we were a
8 legislative body or committee anticipating
9 whether these recommendations will fly or not.
10 I think rather our role and
11 task is to lay the foundation for continuing
12 informative discussions and debate, that at the
13 very least, regardless of what happens with
14 regard to consensus on specific items, I think
15 all the final reports of each subcommittee
16 should be attached as appendices to the report
17 so it gets into the public domain for continuing
18 discussion.
19 CHAIRPERSON CATHERINE DUNHAM:
20 Thank you. Any other comments on issues?
21 Let me also say that the
22 impressive document that will go to the Governer
23 will be that document that reflects the
24 consensus of the Commission. I don't expect the

1 Commission to adopt all recommendations of the
2 subcommittee. Those subcommittee documents
3 should stand as resources to inform and surround
4 ongoing debate on these issues, but the
5 Commission's report, its, will reflect the
6 findings and recommendations of this Commission.
7 In some cases, those will be
8 different than the subcommittee report, but as
9 you said the subcommittee work has been
10 phenomenal and represents the body of documents
11 and information and research that will accompany
12 it. We also -- I want to remind you of giving
13 the Governor an interim report in one of the
14 meetings of human resource form, which is our
15 costituent group, meaning that the human service
16 employment and the elder housing community all
17 meet with the Governor every other month, and we
18 in mid-spring presented an interim finding from
19 each of the subcommittees. So we have been
20 using the work of the Commission to begin to
21 educate a broader group of people about this,
22 reflected both in that meeting, as well as in
23 some media attention, which has been very useful
24 in bringing issues up and starting to educate

1 people about the broad spectrum of issues that
2 surround this problem.
3 With that, let me move --
4 oh, also, just as as a matter of procedure,
5 there is always a hidden agenda to these
6 meetings. This one really is that if we can
7 move as quickly and as expeditiously in the
8 spirit of our recommendations, that we will end
9 as soon as we finish our agenda, and that's both
10 a threat and a promise.
11 MS. CONNIE WILLIAMS: I did
12 not bring sleeping bags.
13 CHAIRPERSON CATHERINE DUNHAM:
14 But in that spirit, I am going -- we are going
15 to use more structure today than we have in the
16 past Commission meetings. We will resort to
17 Robert's Rules of Order when necessary, and also
18 I am going to invite people to assist us on time
19 keeping, that we're going to limit discussions
20 on issues so that we are sure that we cover the
21 entire agenda. No long syloluquies allowed. We
22 will have more meetings in the Commission so you
23 can (inaudible) if you need to, but, in fact,
24 this morning's deliberations are pretty well

1 structured into the agenda as it stands, so
2 other issues will have to be put on another
3 agenda.
4 Areas of agreement, Number 2.
5 I wanted to go over this so that we all know
6 that the Commission has done an enormous amount
7 of work already and gained consensus on some
8 very important issues prior to discussing those
9 areas that still need action of the Commission.
10 Let me just list them for you. We have agreed
11 that a change of paternity procedings to civil
12 actions and extending the jurisdiction of
13 Probate Court, in essence, the decriminalization
14 of paternities, is a major issue to the state.
15 It's a major embarrassment that's still on the
16 records, and that we were dragging people to a
17 criminal proceeding to come to the conclusion of
18 joint responsibility for a child. That's a
19 agreement that the subcommittee and Commission
20 has come to. That, following from that, we will
21 be allowing blood into (inaudible) -- that
22 follows because of the level of evidence that's
23 allowed in probate or civil proceedings versus
24 one in criminal.

1 We are going to be extending
2 the tax intercepts, income tax intercept to non-
3 AFDC cases. This is a federally encouraged, as
4 well as supported activity, that will offer just
5 one more avenue to recoup the money that is owed
6 to children. We're going to implement
7 modification of credit reporting agencies.
8 We're going to use credit bureaus as well as to
9 treat arrearages as any other debt. This is
10 also to be in compliance with the federal law.
11 We are going to extend for just the term of the
12 child support Commission for at least three
13 months. We will -- let's see what is this.
14 This is important legal than I am use to, so I'm
15 going to read it.
16 "Creation of Chapter 209, 32 F
17 allowing a person or DPW to sue for support only
18 in District or Probate Court, limit the range of
19 options for people so that we can be sure that
20 we can respond well wherever those actions take
21 place. We're moving jurisdictions to set
22 support orders as part of criminal non-support."
23 JUSTICE SAMUEL E. ZOLL:
24 Could you expand just briefly upon the last area

1 that you suggest has been agreed upon, limiting
2 non-support jurisdiction to the District Court,
3 Boston Municipal Court and the Probate Court ---
4 CHAIRPERSON CATHERINE DUNHAM:
5 Yes, unless we're clarifying jurisdictions for
6 setting support orders, in terms of growing
7 function of the Probate Court in setting the
8 support orders, still leaving criminal non-support
9 to the District Court. Judge?
10 JUSTICE SAMUEL E. ZOLL:
11 Sorry to incure the wrath of everybody by
12 violating the hope of getting through by noontime.
13 (Laughter.)
14 JUSTICE SAMUEL E. ZOLL: Just
15 a built in parannoia that we have around the
16 table.
17 CHAIRPERSON CATHERINE DUNHAM:
18 It's Saturday, Judge.
19 JUSTICE SAMUEL E. ZOLL: Is
20 the last area of agreement -- could you go into
21 a very brief explanation on that, please?
22 CHAIRPERSON CATHERINE DUNHAM:
23 I think this will get further clarification in
24 the discussion of the Master system and the

1 implied roles and responsibilities of the
2 various courts. It's my understanding that what
3 we are trying to do is civilize the setting of
4 child support orders. In other words, that the
5 majority of support orders will be arrived at
6 and ordered through the Probate Court unless
7 there has been evidence of criminal non-support,
8 at which point the jurisdiction in the district
9 court is the appropriate location.
10 There will be historically --
11 obviously, we are not going to move all of the
12 cases wholesale that are currently ordered
13 through the District Court, but that at certain
14 junctures in the process, whether it's on
15 reconsideration or modification, those orders
16 would be transferred as well to the Probate
17 Courts of the jurisdiction ---
18 MR. JON LARAMORE: Just to
19 expand on what Cathy said, since I think that, I
20 hate to say, that it does get into one of those
21 legal cul-de-sacs, that may be easier to explain
22 from that point of view, that really what I
23 think, that last item she was mentioning amounts
24 to, is the elimination of the ability of any

1 court to set the subordinate in criminal
2 matters, and then the item that she listed
3 before, the new 208 32 F, which would allow
4 either the Probate Court or the District Court
5 to set support in a civil matter in a civil
6 proceeding for support only. I think that's
7 what the subcommittee talked about.
8 JUSTICE SAMUEL E. ZOLL: I
9 think it might be appropriate now if this is out
10 of order, and I wouldn't be offended if you so
11 suggest. There is a recommendation, as I
12 understand it, that if a non-support action is
13 commenced in the District Court -- let's assume
14 for the moment that the then non-paying father
15 in that District Court raises the issue of
16 custody. He crosses the street, goes over to
17 Probate Court and the Probate Court issues a
18 temporary order relative to custody, that the
19 District Court and the BMC both lose
20 jurisdiction over that non-support case.
21 I think that's -- I am
22 hoping that's not the case, but I understand
23 that to be so; is that correct?
24 CHAIRPERSON CATHERINE DUNHAM:

1 It may well be true, and it is out of the
2 context of the agenda because, clearly, there is
3 no consensus on these issues, so it's not areas
4 of agreement. I'd rather put that into the
5 discussion of the Master system. Is that
6 appropriate?
7 JUSTICE SAMUEL E. ZOLL: The
8 reason that I raise it now is because you cite
9 that as an area of agreement. Secondly, that's
10 a very major consideration to everything else as
11 far as the District Court is concerned, because
12 if that's going to be the recommended policy,
13 and I have suggested to Judge Glynn, and I think
14 he is in agreement, that there is no point in
15 our further contributing to the proceedings of
16 the Commission. I don't say to be it angry or
17 upset, but there would be no cases in the
18 District Courts. So that our philosophy or
19 thinking with regard to this issue is purely
20 academic, and I think that has to be resolved up
21 front before you can go into any kinds of issues
22 because we know that in a vast majority of the
23 cases, that an avoiding father is going to raise
24 a straw issue of custody and move over to the

1 Probate Court.

2 He would be foolish if he

3 didn't, and any lawyer that's being retained by

4 him might be guilty of malpractice, if, in fact,

5 there is a question of custody, if he doesn't

6 move it over to the Probate Court and get it out

7 of the District Court. That's a very critical

8 issue that I think we ought to address up front.

9 CHAIRPERSON CATHERINE DUNHAM:

10 That is separate. Thank you.

11 MS. CAROLYN FAMIGLIETTI:

12 Could I suggest that we place on the agenda at

13 some point today a discussion of the way I would

14 phrase what you're talking about, Judge, is a

15 jurisdictional issue in paternity cases, which I

16 think we could discuss separately, what I

17 understood to be areas of agreement. This only

18 applies to what Judge Zoll raises, raising a

19 change of jurisdiction, which would come up in

20 paternity cases.

21 JUSTICE SAMUEL E. ZOLL:

22 That's not so.

23 CHAIRPERSON CATHERINE DUNHAM:

24 It's ---

1 MS. CAROLYN FAMIGLIETTI: It
2 comes up to the ---
3 CHAIRPERSON CATHERINE DUNHAM:
4 It's in relation to custody and child support.
5 MS. CAROLYN FAMIGLIETTI: It's
6 no different today. Married persons today
7 already have that cross jurisdiction because
8 they go to Probate Court.
9 JUSTICE SAMUEL E. ZOLL: But
10 they don't take a support case with them. The
11 support case remains in the District Court.
12 MR. JON LARAMORE: Do you
13 want to handle it under the Master system?
14 CHAIRPERSON CATHERINE DUNHAM:
15 I would like to handle it under the -- maybe as
16 a precursor to the Master system discussion
17 because, as Judge Zoll says, it's an assumption
18 on which the jurisdictional issues have to be
19 resolved before we can set up a system to
20 expedite the movement through them.
21 JUSTICE SAMUEL E. ZOLL: I
22 would then move that the record not reflect that
23 there is any agreement on the issue of
24 jurisdiction.

1 CHAIRPERSON CATHERINE DUNHAM:
2 Six out of seven is not bad. The seventh we
3 will put on to the beginning of the Master
4 system discussion, and I appreciate the
5 clarification.
6 MS. CONNIE WILLIAMS: Does the
7 record show that in other things that you have
8 read, that there is, in fact, agreement among
9 the commissioners?
10 CHAIRPERSON CATHERINE DUNHAM:
11 Speak now or forever hold your peace. Thank you.
12 MS. CONNIE WILLIAMS: Because
13 those are the things that I, as writer of the
14 report, will so record.
15 CHAIRPERSON CATHERINE DUNHAM:
16 The areas that still need recommendation of the
17 Commission policy, and I say policy because I
18 think there are a number of implementations that
19 did not come to close on today, are reflected on
20 the agenda, and we have grouped them this way
21 for a reason, and I will explain it as we go
22 along why they are grouped in the fashion that
23 they are.
24 Wage assignmemt is next in

1 order because at the last Commission meeting we
2 came very close to arriving at a compromise
3 solution that was satisfactory to all parties.
4 I wanted to ask for a re-presentation of that,
5 of that compromise so that we can see if, in
6 fact, we have consensus on what was offered by
7 Judge Zoll as a compromise. We have some copies
8 of the original discussion, which was mandatory
9 wage assignment versus suspended wage assignment
10 with a fair amount of debate, obviously...
11 MS. CONNIE WILLIAMS: If
12 anyone needs the difference between automatic
13 and suspended, I do have about ten copies. Just
14 raise your hand and I can get them to you.
15 CHAIRPERSON CATHERINE DUNHAM:
16 Also, the written version of the compromise
17 proposal is coming around to you.
18 Comment and discussion. Wait
19 a minute. Again, have mercy on the court
20 reporter. Please announce your name as you
21 begin your comment.
22 MS. RUTH-ARLENE HOWE: I have
23 two questions. First, I want to know, is this
24 being proposed by the Wage Assignment

1 Subcommittee, or is this the proposal of some
2 specific individual? Second question is, what
3 is the meaning of the good cause shown? Are
4 there to be some articulated guidelines to
5 define that for good cause shown?
6 CHAIRPERSON CATHERINE DUNHAM:
7 Okay. This came out of the last Commission
8 meeting and originally was proposed by Judge
9 Zoll. This has been discussed, however, in the
10 Commission, and also subsequent to it, in terms
11 of where it fits with the recommendations of the
12 subcommittee that dealt with mandatory wage
13 assignment.
14 MR. FRANK ANDERSON: I would
15 like to direct a question to Hugh. I am against
16 the automatic in any form, personally, but I
17 also think that this is going to extend to all
18 currently pending cases, that any case that is
19 being paid right now, is going to come under
20 this order, so actually everyone in here is not
21 ordered not to pay. They will be subject to a
22 wage assignment immediatly, if I am correct.
23 MR. HUGH F. GALLIGAN: Under
24 the federal requirements existing case law, once

1 it becomes a 4D case, it would be subject to
2 whatever income withholding you come up with.
3 Now, I think what we were looking at on this
4 particular proposal is a provision when you are
5 establishing your original order, if I'm reading
6 that right, or perhaps you might want to extend
7 the modifications on (inaudible) or surrender,
8 something of this sort.
9 Once the case comes back to
10 court or before a decision maker, in terms of
11 your existing case load that isn't in that realm,
12 it would have to fall into an arrearage mode, I
13 would assume, so that slice of the case load
14 would probably fit into your two-week standard
15 that we've been talking about. Unless you
16 decide that the recommendation is everybody pay
17 from income withholding, then you are going to
18 start converting the existing cases ---
19 CHAIRPERSON CATHERINE DUNHAM:
20 That's not automatically assumed by the
21 recommendatons, or even if they were statutes,
22 that the modifications and the retroactivity of
23 that has to be dealt with in the language.
24 MR. JON LARAMORE: Perhaps we

1 could get some more explanation on how this is
2 working. Maybe we could give, you know, a few
3 case scenarios, just for an example ---
4 JUSTICE SAMUEL E. ZOLL: May
5 we respond?
6 CHAIRPERSON CATHERINE DUNHAM:
7 Yes, please.
8 JUSTICE SAMUEL E. ZOLL: This
9 is, essentially, I think represented or seems to
10 be a consensus of compromise in our last meeting,
11 and the chair directed us to come up with a
12 draft, and Debby Propp, as the author of the
13 draft. What would happen here is, if a
14 non-paying father, hypothetically, was brought
15 before the Court and charged with non-support,
16 the wage assignment would, quote, kick in
17 automatically unless the Judge or the Court,
18 assuming we go to the Master system, for a good
19 cause shown determines otherwise, and the reasons
20 for his not having it kick in automatically, he
21 or she would have to stay on the record on the
22 tape.
23 Now, let's assume for the
24 moment that the Judge decides that the wage

1 assignment should not automatically be imposed.
2 And he shows for a good cause, records that on
3 the tape. Two weeks go by and the non-paying
4 father does not pay, then the wage assignment
5 would automatically kick in. What it does is it
6 retains -- the purpose of this is to retain a
7 small amount of judicial discretion, accountable
8 judicial discretion to permit the Judge in those
9 cases where he feels is not necessary or
10 (inaudible). I just wanted to respond to the
11 suggestion that for good cause shown appears to
12 be to a general in terms of language, and you
13 might like to specify, have something more
14 specific, for good cause shown is language
15 that's spread throughout the statutes of the
16 Commonwealth with regard to criminal matters and
17 many civil matters. It's just the -- it's
18 language which has as it's underpinning the
19 presumption that the Judge is going to be fair
20 and, based on all the facts, there are
21 circumstances which require that the automatic
22 suspension good cause is there and should not be
23 involved immediately.
24 The real issue, in short,

1 without making any big speeches, is that either
2 you have confidence in the judges or you don't.
3 If you don't have confidence in the judges
4 around the table, you know, nothing is going to
5 work. I mean, you can't approach this, and I am
6 getting increasingly concerned about it as we
7 get down to putting the language right on the
8 table, that there is a general feeling around
9 here, you know, that you can't trust the judges
10 in these cases, and if that's the situation,
11 let's talk about it, because that affects
12 everything that we are going to do.
13 I personally feel that the
14 judges who handle these cases, there is nothing
15 that a makes a probate Judge any better than a
16 District Court Judge. There are varying degrees
17 of expertise and varying degrees of sort of
18 skill, but on balance, a Judge is a Judge is a
19 Judge, and if there is an aberration or abuse,
20 there are mechanisms for dealing with that and
21 people are dealing with that, but you can't come
22 at this legislation, approaching it from every
23 point of view, that the District Court judges
24 don't know what they are doing, or they don't

1 understand a woman's problem, or there is an
2 insensitivity, because you are not going to show
3 what it does.
4 And the last point I want to
5 make, Madam Chairperson, is the trade off of
6 that is, every step you take toward the Probate
7 Court is a step away from the community court,
8 the local District Court. You are removing
9 access, and that may be okay in some of the
10 middle and higher income communities, but
11 personally in the areas of low income people,
12 and those are the people in the urban areas,
13 this is going to be to the detriment of them. I
14 say this not by way of any threat, but that's
15 something philosophically that I can't live with
16 and I would have to convey that to the
17 legislative authorities, as well as the Governor,
18 but I think this Commission is going to be
19 making a very serious mistake if they approach
20 this with blinders that our sole purpose here is
21 to see that one court system, because of
22 reputation, should be dealing with all of these
23 matters, because you are denying access. That's
24 the trade off for 14 or 15 probate courts.

1 There are 69 district courts.

2 I think that's something that

3 can't be deferred, and I would like to clear the

4 air about that this morning before we go on,

5 because every time I raise the issue, one of the

6 advantage of being cross-eyed is that you can

7 see the reaction of people on the other side of

8 the table when you're not looking at them. When

9 you mentioned the District Court judges, you get

10 that smirk, and enough is enough. We are here,

11 appointed by the Governor to deal with a very

12 significant issue, and I think we have to put

13 some of our past prejudice and biases aside and

14 deal with this thing because we have that

15 responsibility to give him a document, that he

16 is representative of his philosophy as well.

17 Enough of the long speechs, but I just---

18 CHAIRPERSON CATHERINE DUNHAM:

19 Before I recognize some of the people I think

20 the jurisdictional issue and the access issue

21 are very serious, and I will keep those under

22 slightly seperate wraps, as on the agenda. The

23 issue of trust and the issue of the Commission's

24 attitude towards any of the parties to the

1 present child support enforcement system is
2 given that the system has not worked as well as
3 we wanted it to. I think if there is any
4 consolation in the fact that in our
5 conversations with participants in the system
6 and members of the Commission, there is plenty
7 of distrust to go around, and I think if we
8 nominate the Welfare Department, we would get
9 more than its share -- and each part of the
10 judicial system is not my impression, certainly
11 not my bias, that there is any prevelection of
12 distrust in one part of the system more than
13 another.
14 I think there is a generalized
15 healthy distrust of the entire works of the
16 system, and the work of this Commission is to
17 figure out exactly how much structure is
18 necessary and how much structure is over killed
19 in order of getting the job done, and that's
20 what we are talking about here this morning. I
21 still think it's going to be a tough call
22 becuase the trust of this Commission and the
23 varying parties to the child support enforcement
24 system is exactly what we are about, and it's

1 what is feasible, what is necessary, is what we
2 are talking about. I think in the end, Judge
3 Zoll is absolutely correct. We can legislate
4 and we can regulate our brains out, and unless
5 the parties to the system actually can carry out
6 they are functions responsibly, we will not get
7 the result we want, so we have to get back to
8 trust sooner or later.
9 MS. SUSAN SCHUR: I think
10 it's important, Cathy, to respond in setting the
11 framework to what Judge Zoll said, because I
12 think it's going to be a recurring thing. There
13 remains a question about how much judicial
14 discretion there should be. What is coming to
15 focus for me, as I have discussed the guidelines
16 issue in the last couple of days, is what this
17 Commission is doing, and I think I hinted at
18 this the last time, is bringing a multi-disciplinary
19 approach to something that has been treated only
20 as a legal problem before. When we talk about
21 whether we should or should not hear -- I think
22 we have to recognize, maybe I do more, because I
23 am not a lawyer.
24 There are social and economic

1 factors as well as legal factors involved in
2 these decisions. And my criticism or lack of
3 trust, I think, is indiscriminate as to where is
4 the Welfare Department, probate judges, district
5 court judges, or whatever. But it's clear from
6 experience in divorce and child support, that in
7 judges, good or bad, have no specific
8 requirement for training in social or economic
9 matters, family matters. One tries to select to
10 be qualified, but when we get to talking about
11 the kinds of sociologicalcal issues and economic
12 issues that are involved in dividing up income,
13 in bringing up children, in benefiting children,
14 I think we have to remain critical in looking at
15 the ability of an individual, whose training and
16 inclination is to go on precedent, legal person,
17 and to somehow build into the process through
18 what we do here, are of much heavier
19 consideration of those social and economic
20 factors, leaving the legal factors to those who
21 are trained in the legal factors, but bringing
22 in more people and more process that uses the
23 expertise outside the court system. So that,
24 Judge Zoll, is the perspective I have in being a

1 little than less enthusiastic about giving total
2 discretion or retaining total discretion in the
3 legal system, in the setting of orders and
4 dealing of custody, setting of guidelines.
5 I want to set that as kind of
6 a framework, but I think that's become evident
7 in the discussions we have had around this table,
8 and that's the extraordinary value of a group
9 like this, because we are bringing all of this
10 in ---
11 MR. WILLIAM CARITO: I just
12 wanted to look at this proposal and light of
13 some of the things that have been happening,
14 that we can discuss a little bit later on.
15 Let's talk about some of the assumptions here,
16 that I drew from this, given some of the other
17 discussions that we are having in the Master
18 system, I just want to be clear on this.
19 If we are going to assume
20 that the Master is issuing temporary orders, are
21 we also assuming that while the Master's
22 temporary orders will be going out under
23 automatic wage assignment, because if that's the
24 case, I think that's what I read here. We have

1 provision or will be discussing the shape of
2 those provisions within the shape of the Master
3 system for the Judge to find or to modify the
4 Master's decision, based on his own findings,
5 and the only thing that I am concerned about in
6 this is, I think that given that the Judge will
7 have review of the Master's decision, that he
8 could, in fact, find that one of the things that
9 he is going to set aside is the wage assignment
10 piece under the system that we were talking
11 about. But we are also saying that the Judge
12 wouldn't do that unless to do so in writing.
13 In terms of the Master system,
14 Judge Zoll is looking at a compromise proposal
15 in giving what we are trying to talk to the
16 Master system, you will find that acceptable.
17 The Judge is part of the reversal modification
18 of the Master decision, given that any other
19 modification would have to be done in writing,
20 except that the Judge sets aside a wage
21 assignment order, as well, or suspends the wage
22 assignment orders we're discussing, and would
23 put that in writing instead of on record.
24 JUSTICE SAMUEL E. ZOLL: Is

1 it all right to respond to that? I am not
2 excited about the writing. Our problem is now
3 with presumptive sentencing and everything else.
4 When you're handling 150 matters a day in a busy
5 court, a Judge really doesn't have the time to
6 write. It's a little different in a Superior
7 Court setting, where you hear one case a day, or
8 maybe two cases a day, but we have such a high
9 volume of cases, and in most of our -- except
10 for the small rural court, in the urban court
11 when you start to impose writing
12 responsibilities on a Judge, part of the problem
13 is that contribute to delay, not because the
14 Judge intentionally delays. He's carrying just
15 too many things. "I will get to it, you know,
16 tomorrow." He is sitting all day.
17 It will be preferable --
18 everyone of the 69 district courts has an
19 electronic recording system, which is a
20 technological system and is working well. My
21 preference would be that they be allowed to
22 speak into the microphone. On the other hand,
23 if the Commission insists that it be in writing,
24 we would, you know, accept that somewhat less

1 enthusiastically.

2 MR. WILLIAM CARITO: I'm just

3 thinking where we are talking about the Judge

4 having to put his reasons in writing, if he is

5 going to modify his decision, he is going to put

6 it in writing, anyway -- to modify that decision

7 at all, he is going to have to write something.

8 CHIEF JUSTICE ZOLL: If the

9 Commission were satisfied, as long as the

10 writing is preserved, the Judge for good cause ---

11 MS. MARILYN SMITH: One of

12 the concerns I have about the question is that

13 from what we have heard, both in the Probate and

14 in the District Court, there is a great deal of

15 variation between the courts in response to the

16 Commission's wage assignment law. There are

17 courts that routinely impose a wage assignment

18 from the beginning. There are courts that, once

19 a matter comes back before the court, where

20 there has been non-payment, then the order is

21 suspended, assignment be executed, and then, of

22 course, when the matter comes back to the court

23 for non-payment, will permit excuse after excuse

24 to be accepted and wage assignment not be

1 executed. I have heard this from a variety of
2 people in different parts of the state that that
3 takes place.
4 One of the things that I think
5 is very apparent, is when people who study child
6 support, is that lack of uniformity is a source
7 of the enforcement problem, that people feel
8 they have been treated unfairly because they
9 talk to someone who lives in another district,
10 who got a different treatment or who went to
11 District Court or Probate Court and got a
12 different Judge because that was the luck of the
13 draw that day, and he got a different treatment.
14 I think that contributes to the underminding of
15 competence in the system.
16 The other concern I have about
17 reading reasons into the tape is that it makes
18 it much more difficult for a party to appeal.
19 You are talking about people with very limited
20 resources, with whom getting into court in the
21 first place is very expensive,the delays -- you
22 put a case on the calendar, and you often have
23 to wait several hours before the case comes up.
24 The Welfare Department is representing you or

1 the Legal Services is representing you. The
2 clock is ticking, and it's very expensive, and
3 it's a complete waste of time, requiring
4 returning. And then to require someone to
5 appeal, to get ahold of a record, to prepare it,
6 just doesn't happen. The grieved party goes
7 away without a remedy. I think that if there is
8 too much discretion, we will end up having lack
9 of uniformity, and it really hurts both parties
10 in the action. One of the proposals that had
11 been circulated earlier was the question of
12 allowing people to walk out by agreeement, which,
13 to me, I feel more comfortable with because it
14 means that the parties themselves have
15 demonstrated an ability to work together, rather
16 than who is more persuasive on a particular day,
17 and who is it that happens to give the Judge,
18 that was favorable, to the point of view that
19 they happen to ---
20 MR. MARC G. PERLIN: That is
21 correct. As one of the supportors of the
22 suspended income assignment proposal, I am in
23 favor of the District Court's compromise. I
24 personally would like to see some languages, the

1 precise language that this Commission would
2 ultimately recommend, because what we have here,
3 I think, is just perhaps the proposal. For
4 instance, my sense is the Master would be able
5 to suspend in a particular court.
6 I also believe that there
7 should be written guidelines. The current
8 version speaks about the tape recording. I
9 don't think there are tape recorders in Probate
10 Court, at least not in all of them, and I
11 certainly would not want to conclude, in respect
12 to the court, that I would favor written findings.
13 I am somewhat sympathetic to Marilyn, in terms
14 of uniformity as a goal, but I do think that we
15 ought to preserve a motive of fairness, and I
16 think it is correct in every aspect that the
17 court should preserve that motive of fairness.
18 MR. JON LARAMORE: I want to
19 try to, very briefly, contrast -- try to compare
20 this proposal, this compromise proposal, with
21 the suspended proposal that was on the table
22 before, because I really don't think that this
23 compromise is very different at all in its
24 effect from the suspended proposal that has been

1 on the table all along.

2 The suspended proposal before

3 us says that a Judge may, whenever he finds a

4 reason to do so, automatically impose the wage

5 assignment. Under the compromise proposal,

6 Judge Zoll takes -- the criteria is that whenever

7 the Judge finds a good reason, he can suspend

8 the wage assignment, and I think that really

9 those are just two ways of describing exactly

10 the same thing, so what I think is that this

11 compromise proposal would end up with the same

12 number of cases having a suspended wage

13 assignment as the suspended assignment that was

14 on the table before. For that reason, I just

15 want to try to put that on the table. I still

16 agree with Marilyn that the system, that the

17 Commission should be favoring is the proposal

18 that only allows people to walk out when they

19 agree, because for all the reasons that we have

20 gone over time after time.

21 MR. BARRY WALKER: Can I make

22 a suggestion? Take the language that this

23 compromise proposal sets forth and add the

24 following to it, and perhaps solve everybody's

1 problems. After the word court, add or the
2 Master. After the words for good cause shown,
3 add including agreement of the parties. After
4 the words to be noted on the tape record of the
5 proceedings -- strike that, and require it to
6 be noted in writing and add at the end that the
7 compromise proposal, with regard to the
8 assignment of wages, shall be effective in all
9 cases in which an order is issued from and after
10 a specific date, so it avoids recreating
11 situations involving the thousands of cases
12 presently pending.
13 We can't re-invent the wheel
14 all over again the second time. Let's make it a
15 prospective amendment. Let's deal with it
16 prospectively, and let's go from there. That's
17 my suggestion.
18 MS. RUTH-ARLENE HOWE:
19 Question. Could you repeat your last suggestion?
20 MR. BARRY WALKER: My last
21 suggestion is that it be treated prospectively
22 from and after a specific date.
23 MS. RUTH-ARLENE HOWE: Okay.
24 Back up, the next to the last. What were you

1 saying about the last sentence?

2 MR. BARRY WALKER: That we

3 strike the tape record of the procedings and

4 substitute for it the words if the court chose

5 not to order an immediate assignment, the

6 reasons would have to be noted in writing.

7 MS. CONNIE WILSON: Would you

8 just read the whole proposal with the amendment?

9 CHAIRPERSON CATHERINE DUNHAM:

10 Let me ask Barry, it's the prerogative of the

11 chair. Could you offer this as a formal

12 amendment ---

13 MR. BARRY WALKER: I offer

14 this as a formal amendment to the compromise

15 proposal. I will read it from scratch.

16 "An immediate wage assignment

17 would automatically be ordered in every possible

18 case, unless the court or the Master, through

19 good cause shown, including agreement of the

20 parties, determined otherwise. If the court

21 chose not to order an immediate assignment, the

22 reason would have to be noted " -- strike that.

23 "If the court or the Master chose not to order

24 an immediate assignment, the reasons would have

1 to be noted in writing. All such cases would
2 still have suspended wage assignments in effect,
3 and would be subject to the same triggers as
4 those listed in the first draft of our proposal.
5 The last sentence of this
6 compromise proposal should read, "This
7 promulgation shall be effective in all cases in
8 which orders entered from and after a date set
9 so that it is prospective, in effect, and not
10 retrospective, in effect.
11 MR. HUGH F. GALLIGAN: Just
12 the immediate prospect?
13 MR. BARRY WALKER: That's
14 correct.
15 MR. HUGH F. GALLIGAN: The two
16 weeks still stands?
17 MR. BARRY WALKER: Oh, yes.
18 MR. GEORGE KELLY: I am George
19 Kelly. I am a supporter of the suspended wage
20 assignment. I could see ways, and I perhaps
21 agree with Susan that in certain courts it would
22 mean that everyone was suspended and in certain
23 courts, it would mean that none were suspended.
24 That causes me some concern, but there is a very

1 slight shifting in this -- is a very slight
2 shifting in this thing that has a great effect.
3 In other words, the person who is going to have
4 their wages assigned, would have the burden of
5 proof to come forward and show good cause why
6 the wages would not be assigned. I think the
7 burden of proof should be on why the wages are
8 assigned rather than why they are not assigned.
9 If we could come up with a
10 compromise to deal with that, I might be able --
11 to show why the wages should be assigned, rather
12 than why they should not assigned. I think that
13 we might be able to live with something along
14 these lines.
15 CHAIRPERSON CATHERINE DUNHAM:
16 Frank?
17 MR. FRANK ANDERSON: I go along
18 with the presumption for a suspended assignment,
19 allowing and having good faith in the judge's
20 allowing the discretion to assign those in cases
21 where necessary. I still think we are burning
22 the state cost-wise, as far as mind and
23 paperwork that may have been necessary. I don't
24 think it's fair to people who are responsible

1 and would like to pay on a regular basis. I
2 think it's another government involvment in the
3 personal lives of people, that maybe is not
4 necessary.
5 I think it will impose further
6 restrictions and further requirements on people,
7 that, in all probability, will be responsible.
8 MS. SUSAN SCHUR: I have a
9 couple of things. One is, they wouldn't be in
10 court for non-support if they really had to
11 decide, so we were not dealing with that
12 population here. Secondly, I am still concerned
13 about the lack of definition of good cause. I
14 am glad to hear the words from George, that he
15 agrees with me, but I don't think he agrees with
16 me on this.
17 I thought we had earlier in
18 the discussion, not today, said that there was a
19 stigma attached to wage assignment, that we
20 wanted to try to avoid. One of the many reasons
21 it had not been utilized by judges before was
22 they did not want to impose this kind of stigma
23 on people. So, I have a little trouble
24 understanding the desire to save it for the

1 ultimate stigma situation. I am really coming
2 from quite a different place, but I remain
3 concerned about how this is different from the
4 present situation.
5 I am not at all convinced that
6 it is an objective of a Master, who can also do
7 the suspending. I know what good cause means,
8 and how good cause is used normally, but I
9 really would like to reiterate the question that
10 came at the beginning of this debate, which is
11 what is good cause, good excuse?
12 CHAIRPERSON CATHERINE DUNHAM:
13 Let me interject, in terms that we knew that
14 some of these recommendations were going to
15 overlap with one another. The Guidelines
16 Committee, the Master system, the entire
17 assumption on which a lot of these
18 recommendations were based, is that the federal
19 government is requiring us to be more uniform in
20 a way that we approach child support, period.
21 And so there will be more structure on the
22 system than there currently is.
23 As a matter of fact, by
24 October of '87, there won't be guidelines that

1 specify the parameters within which judges,
2 Masters, or anyone else participating in the
3 system, have to act, so I think that, in fact,
4 we are not going to go back to one we couldn't --
5 even if we wanted to go back to a very general
6 definition of good cause. And, secondly, the
7 judges have already indicated the willingness to
8 take responsibility for developing those
9 guidelines in a uniform way across the various
10 courts that are involved in child support, so I
11 think that my presumption would be that judges'
12 willingness, especially in the leadership level,
13 to make this process rational and uniform.
14 MS. SUSAN SCHUR: Just to
15 responsd very briefly. I don't know how one
16 moves below that. I certainly trust the
17 intention of the senior justice. However, it's
18 the junior justices who have not been utilizing
19 the wage assignment, which has been identified
20 as one of the major problems.
21 JUSTICE SAMUEL E. ZOLL: You
22 have come a long way, Representative.
23 (Laughter)
24 MR. JOHN BLODGETT: I am one

1 who is a strong advocate of automatic wage
2 assignment. At the same time, I feel the
3 judge's compromise is very well taken, as to
4 from my point of view. I think again --
5 again, I think the suspended system is no
6 different than what we have today. When the law
7 and the proceedings in the courts, the
8 philosophy of the court changes so that it's
9 prospective, as opposed to retrospective, as
10 pointed out earlier, I think that's the major
11 step. You know, a lot of reasons that the
12 current law isn't working is, you know, a
13 multitude of things. One is there is no
14 tracking of it. The judges are not aware that
15 the guy has been off or hasn't paid for two or
16 three weeks, four weeks, or whatever it may be.
17 But I think that the attitude
18 of the court, that if this is something we do up
19 front, as opposed to this is something we do
20 later, is a major shirk, at least from my point
21 of view, and, again, I am a very strong advocate
22 of the automatic wage assignment but I think it
23 misses a very good compromise.
24 CHAIRPERSON CATHERINE DUNHAM:

1 Ruth?

2 MS. RUTH-ARLENE HOWE: I am

3 prepared to vote against the compromise proposal

4 and let me just briefly state why. I favor the

5 automatic, and I think the comments immediately

6 preceeding me, going to the issue of changing

7 society's attitudes and commitment, to ensure a

8 mechanism whereby designated obligations are,

9 indeed, going to be fulfilled. I think that

10 there is a lot of merit in the automatic system.

11 It overcomes the issue of stigma. It makes a

12 very clear policy statement with regard to who,

13 in the first instance, is to be obligated to

14 meet these things. I think it has merit with

15 regard to the savings of internal staff hours

16 and times, the monitor of the non-fulfillment of

17 the report. You got something in place and you

18 don't have those issues of monitoring compliance,

19 and, therefore, I am prepared to vote against

20 this, because I basically favor the automatic.

21 MR. WILLIAM CARITO: I think

22 it might be helpful if we just looked at the

23 system because I think a lot of people concerned

24 about this will go by the board. As I

1 understand it, the way this would work is that
2 we are going to have a Master system in place,
3 and the Master is going to have guidelines. As
4 I read this compromise, the Master's guidelines
5 are very strictly going to state that in
6 virtually all of the cases you are going to be
7 doing automatic wage assignments with some minor
8 exceptions. I assume that the Master's
9 discretion will be limited in terms of what can
10 be saved, if set aside in an automatic wage
11 assignment.
12 And so now you have a
13 temporary order issued by the Master with
14 automatic wage assignment, which at some point
15 we will discuss later, is seen by a Judge. And
16 in reviewing in a Master's decision, we
17 discussed that some presumption and weight
18 should be given to that Master and by the judge
19 in making his review, and then the Judge, in
20 issuing his order, must make written findings
21 why he is setting aside any of the provisions of
22 the Master's decision.
23 As I see it, this is only
24 going to happen -- the suspend-automatic piece

1 will only happen in a relatively limited number
2 of cases, and I think, you know, given that the
3 Master is going to be making these orders and
4 their presumption is going to be primarily for
5 automatic wage assignment except under certain
6 limited circumstances, we have pretty much an
7 automatic wage assignment in place and we
8 preserve judicial discretion in the review
9 process, and allow the Judge to set aside and I
10 think, you know, as Judge Zoll says, in terms of
11 the judges making their decisions, they are
12 going to be submitting any circumstances, the
13 Judges really be setting aside these wage
14 assignments, and probably in the most agrigious
15 of cases, and I think from our prospective, this
16 is pretty good.
17 CHAIRPERSON CATHERINE DUNHAM:
18 Bill?
19 MR. WILLIAM RYAN: I support
20 this proposal from the prospective. I think the
21 Judge is, or the Master, is going to think twice
22 before he puts down on paper, "The reason that I
23 am going to suspend this wage assignment is
24 because I am going to take a chance on this guy,"

1 which I think happens a lot of times now. I
2 think a Judge or a Master will really think
3 twice and will have to have some concrete
4 reasons, i.e., that the man prior to the period
5 of the separation has shown that he is a
6 responsible parent by supporting the children.
7 I think for good cause shown, if you look at it
8 in that context, I can't see many reasons other
9 than the one I just stated, that the Judge would
10 be willing to put down on the paper that, you
11 know, the employees are going to pick on, or he
12 is a good guy, so I am going to take a chance on
13 him.
14 If someone has to put it down,
15 I think it's a reasonable compromise that it can
16 work.
17 MR. BARRY WALKER: I know I am
18 not supposed to make speeches, but I've got to
19 make this little speech.
20 CHAIRPERSON CATHERINE DUNHAM:
21 It's your golf game, Barry.
22 (Laughter).
23 MR. BARRY WALKER: I'm playing
24 so lousy, I will save money by sitting here.

1 This whole discussion has been
2 permeated, particularly, with reference to the
3 representative's comments with what is, to me, a
4 lack of faith in the judicial system, lawyers,
5 court, and judges. Casey is not here. I am
6 going to speak for him for a second.
7 We have a legal system. It is
8 a system which resolves disputes. It has
9 historically granted to the courts reasonable
10 discretion based upon precedent. It requires
11 the litigants to present to the court what their
12 evaluation and consideration evidence. If the
13 parties are incapable of presenting this
14 evidence, the court must make the decision on
15 its own.
16 I have great confidence in the
17 judges and the lawyers and the Bar, generally,
18 to be able to resolve a simple dispute as to
19 whether or not wages should be assigned. I
20 agree with Frank Anderson's comments about
21 dehumanizing this system, and I am terribly
22 concerned that what we are going to do, if we
23 have an automatic system, which allows no
24 judicial discretion, takes lawyers and the

1 system out of it, is we are going to have no
2 need for anything other than a computer sitting
3 behind the bench, and you press a button and say
4 go.
5 This compromise proposal
6 retains a great deal of historical precedent
7 relative to the practice of law. I don't think
8 we are here to recreate an entire system, but we
9 are here to make the system more effective. If
10 this makes it more effective, let's not try to
11 create a system that is utopian in form and useless
12 in function.
13 JUSTICE SAMUEL E. ZOLL:
14 Absolutely brilliant.
15 JUSTICE THEODORE A. GLYNN:
16 Basically, I just want to say this. You can't
17 legislate justice. It has got to come down to
18 the individual, and I don't mind any Judge who
19 is put in the position where he has to put down
20 on record, written or otherwise, why he is doing
21 something contrary to what has been put down as
22 a finding by a Master or anything else, but you
23 can't legislate justice.
24 CHAIRPERSON CATHERINE DUNHAM:

1 Marilyn?

2 MS. MARILYN RAY SMITH: One

3 concern I have is that I foresee every case in

4 which a Master of an automatic wage assignment

5 being appealed to the Judge, and I think that we

6 are going to end up underminding the Master

7 system. And I think we are just going to have a

8 very, you know, duplication of hearings. And if

9 the Master has a discretion, the presumption is

10 what the Master is going to do, is every person

11 for whom the wage assignment is ordered is going

12 to say I'm aggrieved and I am going to the Judge.

13 CHAIRPERSON CATHERINE DUNHAM:

14 What would be the remedy?

15 MS. MARILYIN RAY SMITH: The

16 Judge will look at it again.

17 CHAIRPERSON CATHERINE DUNHAM:

18 No, no to the problem that you just presented.

19 JUSTICE SAMUEL E. ZOLL: I am

20 almost appalled at the reactions of the

21 opponents to this, who are predicating they are

22 argument on they want to remove any review at

23 all or any consideration by a Judge of

24 mitigating factors. It is just so totally

1 devoid of due process that I find it just to be
2 totally unfair. I don't understand how anybody
3 can think that way, that you can't examine the
4 issue of good cause. It's so fundamental to the
5 American way of justice, that you, if you didn't
6 have that -- its correlary is that everybody is
7 presumed to be guilty, and that's just -- I
8 mean, we found -- you know, people probably more
9 brilliant than I, than those of us who are
10 sitting around this table, decided long ago that
11 those kinds of presumptions should not attach,
12 so you have to leave, as Chief Justice Glynn
13 said, there's got to be some flexibility in
14 there.
15 And if you don't feel that
16 judges have the compentency to make that
17 decision, if you don't, then tell us. Let's
18 take it out of the judiciary and send it some
19 place else, but we can't -- I would hate to see
20 my name described to any document here, which
21 strips the fundamental principal of law upon
22 which our government is predicated, away from
23 this issue. We were not talking about anything
24 of tremendous magnitude. There are enough

1 safeguards in here.

2 MR. PATRICK RILEY: I'm Pat

3 Riley. I am not sure with whom I agree or

4 disagree at this point, because I do have a

5 couple of concerns. One, I'd like to preserve

6 some discretion for people, where they agree.

7 And I would like to see provision made that

8 where there is no history of non-support and

9 where the parties agree to suspend it, that that

10 not be at the discretion of anybody at that

11 point; is that clear, in a people still have

12 that right to do so if they have not already

13 been guilty of non-support.

14 JUSTICE SAMUEL E. ZOLL: Yes

15 CHAIRPERSON CATHERINE DUNHAM:

16 I would like to start to end the debate on this

17 and take this to a vote.

18 MS. SUSAN SCHUR: I am not an

19 opponent. I don't think anybody was saying we

20 should not consider mitigating factors. I think

21 what we are trying to make sure is that we set

22 up a system which is used effectively, rather

23 than abused effectively.

24 I think the questions referred

1 to by Judge Zoll directed at (inaudible), rather
2 than at precluding all possible discussion of
3 mitigating factors.
4 JUSTICE SAMUEL E. ZOLL: Move
5 the question on the compromise.
6 CHAIRPERSON CATHERINE DUNHAM:
7 Compromise as amended?
8 JUSTICE SAMUEL E. ZOLL: Yes
9 CHAIRPERSON CATHERINE DUNHAM:
10 Hearing no objection ---
11 MR. MARC G. PERLIN: Could it
12 be made clear on the record that we are voting
13 on the essence on the program since there is no
14 precise -- we we leave it to the discretion of
15 the Drafting Committee to put the appropriate
16 language in; for instance, to modify the
17 language such as wage assignment and income
18 assignment?
19 MR. FRANK ANDERSON: Point of
20 information. The two subcommittees have voted
21 against the Automatic Wage Withholding Service
22 Committee for automatic withholding and the
23 Enforcement Committee, two committees.
24 CHAIRPERSON CATHERINE DUNHAM:

1 Yes. I would like to hear all those in favor.
2 Commissioners alone vote.
3 MS. CONNIE WILLIAMS: Unless
4 you are designated. I count ten votes. Those
5 opposed?
6 CHAIRPERSON CATHERINE DUNHAM:
7 No opposition.
8 MS. CONNIE WILLIAMS: I know.
9 (Ten voting in favor and Nine
10 voting against)
11 MR. FRANK ANDERSON: Cathy,
12 by what authority does a designee have to vote
13 as a commission member?
14 CHAIRPERSON CATHERINE DUNHAM:
15 If they are given that authority by the
16 Commission members.
17 MR. FRANK ANDERSON: I
18 challenge the Chair's authority on that, that I
19 am not allowed to vote on the committee.
20 CHAIRPERSON CATHERINE DUNHAM:
21 So noted. Obviously, the sense in this case is
22 close, but in favor of the compromise solution.
23 We will not that, and it will be so recommended.
24 As there is strong opinion about minority

1 opinion, we will reflect that in the body of the
2 recommendations, but as it is, it carries the
3 compromise solution.
4 CHAIRPERSON CATHERINE DUNHAM:
5 Moving this discussion, we are going to go to
6 easier things like jurisdictional issues. The
7 jurisdictional issues are going to be taken in
8 the context of the discussions of the Master
9 system, or as a precursor to it. I would like
10 to assign that responsibility to Jon Laramore.
11 MR. JON LARAMORE: Let me just
12 say a couple of words to try to set the stage
13 for this and then let Judge Zoll state his
14 position, and others will join him. What we
15 have created, and I think comes with consensus
16 on both and Expedited Procedures Subcommittee
17 and in the Commission is a system that retains
18 jurisdiction to set and enforce child support
19 orders in both the Probate Court and the
20 District Court and the BMC, and when I say the
21 District Court, I include the BMC in that, and I
22 know that's formally incorrect, but in my
23 discussion that's what I will do. So there is
24 concurrent jurisdiction retained, just as in the

1 current system, both in out-of-wedlock cases and
2 in wedlock cases.
3 The subcommittee had a long
4 discussion on the issue that we are about to
5 address as a Commission, and here's what that
6 issue is. When there is a support case in the
7 District Court and one of the parties raises an
8 issue about custody or visitation, what should
9 happen. There was a feeling in the subcommittee
10 that the Probate Court, and let me
11 parenthetically note that the subcommittee was
12 dominated, I think, number-wise by Probate Court
13 practitioners, and perhaps that has something to
14 do with this, and I wouldn't rule it out.
15 Anyway, the subcommittee came to a conclusion
16 after some debate that a system should be worked
17 out so that when a custody or visitation order
18 is raised, issue is raised, that issue is
19 decided in the Probate Court, so we talked about
20 a number of different systems to do in a
21 technically, and I don't really want to get into
22 the technical issue of how to transfer or move a
23 case, because that's really a technical issue,
24 but the decision that we reached was that when

1 one of those issues raised, it should be decided
2 in the Probate Court.
3 We then came to another
4 question, that is logically separate, and it
5 comes afterwards. I think it's logically
6 separate, and I think it's the question that's
7 before us now, which is once that custody or
8 visitation or decision is made in the Probate
9 Court, what happens? Should the whole case stay
10 in the Probate Court, including the support
11 order, or should somehow some of the case remain
12 in the District Court, which is -- or should
13 some of these cases maybe remain in the District
14 Court. Let me list two or three of the factors
15 that we took into account in discussing this,
16 and I'll end.
17 One is simply -- before I do
18 that, let me say something about the system as
19 it exists now. Now, in some cases, there are
20 people who have cases in both courts. It
21 happens in two different ways. Either they go
22 in to District Court and get a support order and
23 then later go in to Probate Court and get
24 divorced, or they get divorced, and they have

1 trouble enforcing they are support order in the
2 Probate Court, so they go in and get enforcement
3 in the criminal system in the District Court.
4 So, it exists now. There are split cases now
5 and what happens is there is a support order in
6 each court, but the parties are just trying to
7 enforce one, even though there are two in effect
8 legally.
9 So, what we decided as a subcommittee
10 by a narrow margin, and this is what is coming
11 up again now is that when the case goes to
12 Probate Court for a decision on custody or
13 visitation, it should remain there and all the
14 issue should remain in the Probate Court, the
15 custody issue, the visitation issue, and the
16 support issue should remain in the Probate Court
17 so support enforcement is through the Probate
18 Court.
19 Now, the disadvantage of that
20 is one that this Commission may want to decide
21 in changing our recommendation. The
22 disadavantage is that it has started a case in
23 District Court, they've picked the District
24 Court, maybe because it's more acceptable to

1 them or because it's easier for them to advocate
2 this without a lawyer or for some other reason
3 and the other party, perhaps, has raised a
4 custody issue and has forced them to litigate
5 support in the Probate Court. For example, a
6 perfect example is, if you lived in Worcester
7 County and you lived down the Milford way, in
8 that part of the state, you have got to litigate
9 it in the Probate Court in Worcester and make a
10 trip every time you want to litigate support.
11 That, to me, is the major down side.
12 The major advantage is that
13 you have a unified case, and you don't have one
14 issue to be dealt with in one court and one
15 issue being dealt with in another, so that's --
16 I meant that to be a fair and unbiased
17 presentation of what we did in the subcommittee,
18 and others may challenge whether if, in fact, it
19 was that, but that's the background. I think it
20 will be appropriate for Judge Zoll to state his
21 proposal to alter the subcommittee's
22 recommendation on that and then for others to
23 join him.
24 CHAIRPERSON CATHERINE DUNHAM:

1 I would like to take you to a separate matter on
2 the Master system.
3 MS. LEAH SPRAGUE: Question.
4 How often does it happen that there is a
5 criminal non-support case in the District Court
6 and someone brings up the issue of custody or of
7 visitation?
8 JUSTICE SAMUEL E. ZOLL: I
9 don't think the statistics, at the moment,
10 Attorney Sprague, are particularly meaningful.
11 It's what it portends in the future. That's,
12 perhaps, alleviant in my response to this. The
13 situation, as it is presently set up -- let's
14 take a hypothetical, in a court where we have a
15 substantial amount of non-support activity, and
16 the court has an outstanding record for it.
17 A mother with two or three
18 children goes to the Dorchester District Court
19 and a non-support action is brought against her
20 husband, a typical kind of situation, who is a
21 public employee for the City of Boston, has some
22 financial wherewithal. The first thing he is
23 going to do in the Dorchester District Court, he
24 is going to raise the issue of custody: "Wasn't

1 able to see my children last weekend, and she
2 denies me access. Every time I go over there,
3 the door is locked." You know, all the
4 business connected with custody. "Your Honor,
5 my attorney and I are filing a motion this
6 morning in the Suffolk Probate Court, to have
7 the issue of custody and support resolved." Out
8 the case goes.
9 They go over to Dorchester.
10 This woman now has to leave Dorchester, where
11 she is getting individualized attention by a
12 very sound probation department, getting a case
13 heard within a matter of hours, because of the
14 court emphasis on non-support, now has to come
15 into the City of Boston, generally by subway,
16 into the old courthouse over here in Pemberton
17 Square, where she becomes part of thousands.
18 The case is then heard and the
19 Judge decides that she is in the right. The
20 Probate Court issues an order. Custody is still
21 given to her but there is some modification.
22 Two weeks later he comes to the house, on the
23 weekend, the children aren't there. The fight
24 is on again, because he doesn't want to pay the

1 money, really. He comes back, he drags her back
2 into Pemberton Square in Dorchester. She has to
3 come back again. I think what you have to
4 assume is that a lot of the people, who are
5 victims of this non-support in that kind of
6 urban setting, they don't have the emotional
7 wherewithal to stay with proceedings of that
8 nature, so they fall behind to the reasonably
9 well financed husband. I don't say this to show
10 any bias on any of these type cases, but that's
11 what happens in the urban setting.
12 I think that that access is a
13 very important issue. It's important in
14 Dorchester, and it's important in Williamstown,
15 where they come out of the hills, and they are
16 very unsophisticated. And if you say to
17 somebody, "You can't go to the North Adams Court
18 because your husband has raised an issue." You
19 have to go to Pittsfield, where the Probate
20 Court is sitting, in the middle of the winter.
21 I don't want to over dramatize, but these are
22 real issues. You come out of the hills of
23 Williamstown and get down to the Probate Court
24 in Pittsfield, and you go into that culture

1 shock. You go down there once, if you go down
2 at all. You're a woman, who is looking for some
3 support money, and it's all over. That's why
4 when they originally put in local district
5 courts, to take care some of some favorite
6 lawyers.
7 The governor wanted to take
8 care of some favorite lawyers, to appoint as
9 judges in particular local communities. There
10 was a second purpose that was involved, and the
11 second purpose was to give people access. I
12 think that's very important. Thirdly, I
13 underscore it by suggesting to you that in many
14 areas of the state, unlike Boston, public
15 transportation is non-existent. It's a critical
16 access issue, and it harms those least able to
17 come to grips with it. That's really my reason
18 for it. It's an extrajudicial, I think, in terms
19 of being opposed.
20 CHAIRPERSON CATHERINE DUNHAM:
21 There is also the non-lawyer speaking. In terms
22 of the jurisdictional issue, the alternative
23 that's being suggested is that the District
24 Courts can be the place where child support

1 matters are acted on clearly and not in conflict
2 with the probate situations regarding custody
3 and visitation. I am not quite clear.
4 Understand me, I love the access and
5 transportation issue, but I don't quite
6 understand the legal implications.
7 JUSTICE SAMUEL E. ZOLL: The
8 legal implications imposed, as we understand it,
9 let's take the husband, for example, who is
10 being charged with non-support of his children.
11 The lawyer representing him, or if he is
12 representing himself, files a motion in the
13 Probate Court in which he raises the issue of
14 custody. The Probate Court would then entertain
15 two questions: non-support and custody.
16 If the Probate Court issues a
17 temporary order relative to custody and/or
18 support, any order that they issue as proposed,
19 the District Court loses jurisdiction
20 completelyt. We are out of the picture. Now,
21 if that's what the Commission wants -- again
22 getting back to what we said earlier, Chief
23 Justice Glynn and I discussed this, that any of
24 these other proposals that you have, whether

1 it's Masters, or whatever it is, are academic to
2 us, because the number of cases that will remain
3 in the District Court will be so few in number,
4 that no matter what you do, is not going to have
5 any impact on us at all.
6 MR. JON LARAMORE: I would
7 like to see if there is a compromise that might
8 satisfy everybody.
9 JUSTICE SAMUEL E. ZOLL: That
10 was a ---
11 MR. JON LARAMORE: My
12 question was whether the following system would
13 satisfy your concerns. The case is brought in
14 District Court and the custody and visitation
15 issue is raised and the custody and visitation
16 issue is settled in Probate Court. It's then up
17 to the person who has brought the support action
18 to decide whether he or she would like to have
19 that support action stay in the Probate Court or
20 move back into the District Court.
21 MS. LEAH SPRAGUE: Does that
22 mean delaying the resolution of the non-support
23 issue?
24 MS. CAROLYN FAMIGLIETTI: One

1 of the things that we discussed -- first of all,
2 this would affect the married population and the
3 unmarried population slightly differently, but
4 just for purposes of this discussion, we clearly
5 stated in our discussions, both in the Expedited
6 Process Committee and in the Legislative
7 Committee, that we were very sensitive to the
8 possibilities of those issues being raised,
9 therefore, custody proceedings, while in action --
10 you can't prevent someone from filing. The case
11 would have to be concluded on the issue of
12 paternity and on the issue of the support order
13 before any further proceedings could be
14 litigated on the custody litigation.
15 MS. LEAH SPRAGUE: Nicki, we
16 are talking about criminal non-support.
17 MS. CAROLYN FAMIGLIETTI: No,
18 we're not, no. One of the very early
19 discussions, which is what Cathy mentioned, in
20 terms of agreement, is that setting of support
21 orders would be done in civil actions and, two,
22 amendments to do that would be a civil paternity
23 action and a civil support action. Both of
24 those would have concludecurrent jurisdiction

1 proposal issues in District and Probate court.
2 The only question remaining is,
3 in that portion of the population of those cases,
4 where they litigate custody and visitation in
5 the Probate Court of how do we resolve the
6 difficulties that's then created for them?
7 CHAIRPERSON CATHERINE DUNHAM:
8 John had suggested that there be a choice
9 offered to the person who brings the child
10 support request, as to whether the matter stays
11 in District Court or goes to Probate.
12 MR. JON LARAMORE: Once the
13 custody issue is resolved -- the person who
14 brought the support case would rather have the
15 Probate Court enforce the support order or would
16 rather go back and have the District Court
17 enforce the support order.
18 MS. RUTH-ARLENE HOWE: That
19 would certainly answer the access concern and
20 also would speak to maximizing the choice of the
21 moving party, who presumably is the one seeking
22 the ---
23 MS. LEAH SPRAGUE: I don't
24 understand.

1 MR. BARRY WALKER: While the
2 Judge ponders his response.
3 (Laughter).
4 JUSTICE THEODORE GLYNN: To
5 save time, I have no problem because the Probate
6 Court is in the same building with us.
7 MR. BARRY WALKER: Can I make
8 some general comments about this issue? To try
9 to put it into some prospective, on the
10 subcommittee, Jon's subcommittee, I had
11 originally -- my thinking was like Pablock's dog
12 because I am a Probate practitioner. I had
13 supported the fact that once you got into a
14 custody and visitation issue, it belonged in the
15 Probate Court, and it should be adjudicated
16 there, and the District Court should leave
17 jurisdiction. I have been persuaded a little
18 bit by some of the arguments that I've heard
19 with regard to access, particularly, and in that
20 persuasion, I thought of a couple of situations,
21 and part of the situation that I have thought
22 about deals with what I consider to be the
23 mystiques surrounding the Probate Court's
24 generic ability to settle difficult custody

1 and/or visitation cases. And I really use the
2 word "mystique" advisably.
3 There has been a vast turnover
4 in the judges that sit in the Probate Court in
5 the last five years of this Commonwealth,
6 tremendous turnover. Similarly, there has been
7 a vast turn over in the judges that sit in the
8 District Court. It seems to be that a former
9 clerk of a Superior Court, who is designated to
10 become a judge in the Probate Court, brings to
11 that position in the first two or three years of
12 his sitting no more expertise than a former
13 Chairman of the State Ethics Committee, who is
14 appointed to the District Court, and if we
15 assume that to be the case, then all judges, to
16 a certain extent, are created equal. They all
17 have some ability to hear and decide cases, and
18 they all have the same resources because there
19 are no really special resources in the Probate
20 Court on the issues of custody -- wait a minute,
21 in the first instance of the issues of custody,
22 and on difficult custody cases, I would remind
23 the probate practitioner what happens is they
24 appoint out of court guardian ad litem, not in

1 court guardian ad litem.

2 In a same power would pertain

3 in the District Court, if the District Court

4 were to retain jurisdiction of these cases.

5 Now, if, in fact, 95 percent or important of the

6 Probate Court cases involving alleged custody --

7 alleged non-support or non-support issues, do

8 not involve custody, and I think that's a

9 reasonable statement. There are very, very few

10 really, on the scale of 100, really contesting

11 the custody issues.

12 There are a great many

13 seriously vigorously contested visitation cases.

14 I think the more appropriate division in the

15 resolution of which court should have

16 jurisdiction should be based not upon custody,

17 but upon visitation in that division. It seems

18 to me that if a compromise were proposed,

19 whereby cases in which custody was raised as a

20 legitimate issue, and there ought to be a de

21 novo hearing in the first place, to determine

22 its legitimacy, and those cases went in to the

23 Probate Court, in cases in which visitation was

24 raised as an issue, remain in the court and

1 which the case was first brought. I think you
2 will probably have a reasonable resolution with
3 the same kind of resources and the same kind of
4 judicial manpower appropriate to those cases.
5 I would suggest that as a far
6 more viable alternative, because it's more
7 consistent also with the access issue.
8 CHAIRPERSON CATHERINE DUNHAM:
9 The first compromise on the table is Jon's, and
10 I think, Barry, yours is another step beyond
11 that, so I am going to ask Jon to clarify that.
12 MR. JON LARAMORE: I would
13 like to keep my proposal on the table, and what
14 Barry proposes is different than mine, probably.
15 MS. LEAH SPRAGUE: Can I ask
16 Jon to clarify his proposal? John, I am
17 concerned about somebody being able to delay the
18 non-support issue. On your proposal, the woman
19 with the three kids -- I have come out of the
20 hills, and I've got a case that I am pursuing to
21 try to get support. My husband says, "You know,
22 we have a custody dispute. I'm going to go to
23 the Probate Court in Pittsfield," does that mean
24 I've got to wait until we go back into court, or

1 is there a District Court Judge that can---

2 MR. JON LARAMORE: Let me say,

3 what I think most of us are assuming is what we

4 discussed and is what is also pretty carefully

5 embodied in our legislative drafting, which is

6 that the case couldn't even go to the Probate

7 Court in the first place until after the

8 District Court judge sets the support order, and

9 that support order can't be changed -- it's in

10 effect. It can't be changed until the Probate

11 Judge or some Judge down the line finds that the

12 modification standard of what you call a change

13 in circumstances is met. That's going to be in

14 effect the whole time during the whole

15 litigation.

16 MS. LEAH SPRAGUE: So I get

17 the order and my husband is going to try to

18 challenge the custody in another court?

19 MR. JON LARAMORE: Right, and

20 part of the reason we did that was because we

21 thought it would help to cut down on the number

22 of false custody and visitation issues raised.

23 It's not a panacea.

24 MR. WILLIAM RYAN: Let me

1 just say from the Probate Court prospective,
2 what we are talking about here is creating a
3 whole new different animal. Except in a narrow,
4 very narrow range of cases, the District Court
5 has never had jurisdiction over custody and
6 visitation. It has always been a Probate Court
7 issue. Most of the time we are dealing with
8 these types of cases, and visitation and custody
9 is raised as a smoke screen. And if the support
10 order is set in the District Court, a really
11 true visitation or custody problems would then
12 go to the Probate Court. It's not that the
13 District Court judges don't have an interest or
14 an expertise in family law matters. It's the
15 support staff that we are talking about.
16 The Family Service officer in
17 the Probate Court, that is his sole business, is
18 dealing with custody-visitation investigations,
19 as opposed to the District Court probation
20 officers that might have a few wife beaters, a
21 few drunks, a few driving-unders, and then they
22 might be sent out on these othr types of
23 investigations, too. What we are talking about,
24 not necessarily the judges, but the support

1 staff that's available to the judges in the two
2 systems.
3 MS. MARILYIN RAY SMITH: I
4 would like to speak in favor of Jon's compromise,
5 because I think all along, in listening to Judge
6 Zoll make the presentation, that he so
7 eloquently made earlier, I was persuaded earlier
8 in the Expedited Process Committee, having
9 someone who walked into the meeting, thinking
10 that all those cases are in the Probate Court, I
11 was persuaded by these arguments on the question
12 of after being in this hardship, to someone who
13 needs to get into a court right away and who
14 needs to go into a court, that it is possible to
15 go without an attorney.
16 On the other hand, I also
17 found the support personnel that Bill was
18 talking about in Probate Court, the family
19 service officers, to be truly outstanding in
20 they are ability to resolve some very
21 potentially bitter and and very damaging to the
22 children visitation to the custody question. I
23 think that they bring a degree of expertise and
24 training, and many of them have postgraduate

1 degrees and social work or child development or
2 things that relate to family law. They are not
3 experience with postgraduate degrees that might
4 be in criminal justice. It's the only cases
5 that they may be dealing with.
6 Unlike Barry, I don't think
7 custody and visitation are so easily separated.
8 I think someone who is interested in raising the
9 smoke screen and causing trouble, they can just
10 as easily raise the custody question, when what
11 is really at issue is the visitation question,
12 and you can't separate those two. And,
13 particularly, in the trend that we now see, the
14 trend that I support, which we have widespread,
15 is joint legal custody with every visitation
16 pattern, so we are not talking about sole
17 physical custody with one parent or another.
18 It's often a joint physical custody, and
19 discussions come up about decisions, whether it
20 be summer camp, or the type of medical care that
21 someone needs. There's a wide variety of things
22 that come up. There are custody questions and
23 visitation questions, but the visitations and
24 custody is often raised in order to to get at

1 the visitation problem.

2 What Jon's solution proposes

3 allows people to go to Probate Court and the

4 support matter stays in the court that the

5 moving party chose. I think if you look at the

6 history of these orders, custody and visitation

7 issues come up relatively rarely, maybe three or

8 four times over the course of the order, whereas,

9 the support issue comes up on a very regular

10 basis, particularly, if you come to a system

11 where you have periodic update, you may be

12 talking about every year you would look at it.

13 I would support the proposal in a Jon has

14 indicated of allowing the moving party to choose

15 the support issue. **END OF TAPE 2

16 CHAIRPERSON CATHERINE DUNHAM:

17 Before I acknowledge George, I would like to

18 alert the Commission to the fact that the issue

19 of jurisdiction is separate as distinct from the

20 issue of joining custody and visitation to child

21 support. This Commission is charged with

22 expediting child support but, obviously,

23 parallel to that is a tremendous concern that

24 was raised in the hearing. It's, obviously,

1 been represented by the subcommittee reports
2 around how both the setting of the order around
3 child support relates to custody and visitation,
4 as well as the enforccement of the standing
5 orders of the two areas, so that I want this
6 discussion -- after George, I would appreciate
7 Judge Zoll's response to both proposals, and
8 then I would like to bring the matter to a vote
9 so that we can move to the Master system.
10 George?
11 MR. GEORGE KELLY: I would
12 like to comment on that. I think that it,perhaps,
13 is an area that we can maybe reach a compromise
14 on this area that would meet both Jon's needs
15 and Judge Zoll's needs and the BMC'S needs.
16 Well, I think I must respond, while there are
17 probably spurious requests for addressing
18 problems and visitation and custody, I think
19 that we all should be aware in a raising of
20 consciousness, there are also spurious requests
21 for support, or it may be not needed or it is
22 just to move an issue about.
23 I think that we should all be
24 aware of in a before we make any judgment on it.

1 Most of the other Commissions in the other
2 states and ours is moving towards that and have
3 addressed some problems of access. When I talk
4 of access, I talk of access of children and
5 parents. Most states have adopted a public
6 policy, that that should be perserved, whether
7 those parents were ever married or were not ever
8 married.
9 Our subcommittee has drafted
10 some -- in our last subcommittee meeting, has
11 drafted some items of both Michigan and Rhode
12 Island law, and just out of our own heads, I
13 would like to address some of these problems on
14 visitation or access problems.
15 Visitation tends to be a very
16 derogatory term.
17 CHAIRPERSON CATHERINE DUNHAM:
18 Which kind of access?
19 MR. GEORGE KELLY: I am
20 talking of access of children to parents, in all
21 forms, whether that be a telephone call or a
22 visit. I think that it's true that people need
23 to get to these community courts and get these
24 problems resolved as quickly as possible. Is

1 there some kind of way that we could develop,
2 that it would be the same case, whether it's in
3 District or Probate Court. Is there some kind
4 of record-keeping change we could make so that
5 the case number or the case file follows from
6 one Court to another? I don't know. We had
7 discussed that, I know, in Jon's subcommittee.
8 Some people thought that would be a very tenuous
9 way to go. Maybe it is, and maybe it isn't.
10 I am sensitive to the needs of
11 people to get support orders addressed quickly
12 but sometimes money is more easily made up than
13 time. Also, visitation and custody issues need
14 to be addressed quickly, and if one is addressed
15 quickly and one is addressed slowly, we might
16 have a problem. I would like to see us come to
17 some compromise where the District Court could
18 retain its jurisdiction in the appropriate
19 cases. I am one who thinks that if a person is
20 a criminal non-supporter and has been long
21 guilty of that, the Probate Court may be an
22 entirely inappropriate place for him to go, and,
23 you know, somebody who is consciously depriving
24 the family of their needs to exist, they need to

1 go to jail. That may sound funny, coming from a
2 father, but they need to go to jail, but that
3 would be based on the ability of them to pay
4 that order, and, you know, just saying, "Well,
5 the hell with them, I am not going to do it,"
6 but I think that we can get people in those
7 situations sometimes, and I have seen those
8 situations, where a person is paying a support
9 order, and they are just completely buffaloed as
10 to getting any address of the visitation or
11 access problem or custody problem that may exist.
12 There are cases where custody
13 is legally in the hands of one parent and
14 actually in the hands of the other parent, and
15 those cases are problems.
16 CHAIRPERSON CATHERINE DUNHAM:
17 Our train didn't attack you at the five-minute
18 point. (Laughter.)
19 Anybody that speaks gets a
20 flag after five minutes. Judge, would you
21 respond to the two proposals?
22 JUSTICE SAMUEL E. ZOLL:
23 Madam Chairperson, I am flattered by statements
24 by, I think, Nicki and Marilyn, that they had

1 been persuaded by my arguments to move in this
2 direction. They do a very fine job of
3 disguising that movement, but I don't say that
4 facetiously, Marilyn.
5 MS. MARILYIN RAY SMITH:
6 Sounds facetious.
7 JUSTICE SAMUEL E. ZOLL:
8 Although Jon's compromise obviously reflects
9 some very sound thinking, if you play it out,
10 this is what occurs. Again, non-support actions
11 brought in the District Court, the husband
12 raises questions of visitation. Take the North
13 Adams-Pittsfield situation, that's a real one.
14 The husband files a motion in
15 the Probate Court. Probate Court makes an order
16 relative to visitation, custody and support.
17 The husband doesn't pay support. After two or
18 three weeks, unemployed. So the wage assignment
19 is of no effect. Sort of an itinerant worker.
20 The woman from Williamstowm has to go down,
21 since the District Court will no longer have
22 jurisdiction, and she agrees that it's going to
23 stay intimidated, whatever the reason is. She
24 is not represented by counsel. She wants to get

1 out of the courtroom as quickly as possible.
2 She has her money. Visitation looks good. "I
3 was treated very fairly here in the Probate
4 Court in Pittsfield. I am going to stay here."
5 She goes back to Williamstown
6 and things break down in two or three weeks.
7 She has to go back. All the way down, that's
8 the history of these things, particularly, on
9 the chronic non-supporters and that's what we
10 see in District Court, are chronic
11 non-supporters.
12 She has to go down to
13 Pittsfield again, three weeks later, "I want to
14 have my case heard," not represented by counsel,
15 may have access to a D.A., may not, understaffed.
16 The D.A. can't get even prosecute the cases in
17 Berkshire County. That's a fact of life, he
18 doesn't have a large enough staff, so the
19 non-support area, as opposed to a felony case,
20 has to be prepared. "We can't reach it today.
21 Why don't you come back in two weeks?" That
22 happens in the District Court, too. So she goes
23 back to Williamstown and she comes back down
24 again.

1 It's not long before she
2 decides she is not going to make in a trip, and
3 you have forever barred her from coming back to
4 the North Adams Court to reactivate that
5 particular proceeding. And so on paper that
6 compromise seems to be a fine one, but it just
7 is not workable, and I don't want to intrude on
8 the Probate Court domain of custody and that
9 kind of thing. I agree they have a special
10 expertise. I am not trying to take their
11 business away. What I am trying to do is ask
12 the members of the Commission to balance the
13 slight uncertainty -- I've got a Probate Court
14 order, I've got a District Court order --
15 against the issue of access and don't foreclose
16 anybody's right to come into their local
17 District Court on a matter that's so important,
18 you know, as non-support.
19 I mean, that's my pitch. I
20 don't want to invade the Probate Court domain at
21 all. I am not going to represent to you that
22 our probation officers have the same kind of
23 skills. We have many important responsibilities
24 than the probation officers, so it's really not

1 a legal issue, Madam Chairperson. As I see it,
2 it's a public policy issue that the members of
3 this Commission have to decide. You are
4 balancing the limited amount of confusion that
5 we have now, and you hear the horror stories,
6 but a lot of people aren't confused by that.
7 There are a couple. I had one
8 handed to me this morning, but I can give you at
9 the where the people aren't against the
10 principle of access.
11 MR. JON LARAMORE: I need to
12 get one thing clarified. What you are saying,
13 if I understand you correctly, is what you would
14 like to do is -- maybe I'm not saying this
15 correctly, is to leave the custody and
16 visitation still in the Probate Court, but to
17 leave the support order in the District Court?
18 My only response to what you said is, Number 1,
19 with the example that you give when the woman
20 comes out of the hill and does her campfire and
21 gets on her mule and comes down to Pittsfield,
22 and if she leaves the court order there, she
23 leaves the enforcement there, Number 1, she can
24 always come in to the District Court on the

1 criminal non-support, which is still going to
2 remain here. It's going to be leverage for her,
3 and she can't go to the Probate Court on that,
4 she can only go to District Court. Number 2,
5 I don't think that my compromise would preclude
6 some later decision. If she has trouble getting
7 enforcement in Probate Court, to opt back to the
8 District Court. All I am looking for is a
9 system where there is only one order to be
10 enforced at a given time. It's either an order
11 of Probate Court or an order of the District
12 Court, and they are not both out. I am looking
13 for a unified system in that way. I think we
14 can draft in the flexibility that you are
15 looking for, that if she is unhappy in the
16 Probate Court, she can go back to District
17 Court.
18 JUSTICE SAMUEL E. ZOLL: I am
19 just worried that that compromise disregards the
20 emotional state of the people, the woman who was
21 involved, as we see them in these non-support
22 proceedings when they come into the District
23 Court. We are not talking about the people who
24 are, you know, Phi Beta Kappa. We are talking

1 about people who are under great stress, who are
2 marginal, who are limited in many, many
3 different ways, as to what to us is a very
4 simple concept of, "You can go down and just
5 sign this paper. You are not represented by a
6 lawyer, but sign this paper and you can agree to
7 this, and if you don't like this, you can come
8 back." Too complicated. We have to make it
9 very simple.
10 MR. WILLIAM CARITO: I would
11 sort of like to come back to the system, because
12 I think this might provide some resolution in
13 looking at the system and the way it should
14 operate. Once again, we are talking about
15 Masters in both District and Probate Court, and
16 once again, we are going to be talking about
17 Masters operating on the same guidelines, so,
18 presumably, District Court orders or Probate
19 Court orders should be roughly within the same
20 parameters.
21 In addition to that, we are
22 going to be talking about the 4D agency, in
23 terms of centralized collection issue. It may
24 be, in order to resolve this, that the issue is

1 which order does 4D enforce, and in terms of
2 resolving this issue, it may be that 4D only
3 enforces the latest outstanding order, be it
4 from a District Court or a Probate Court. And
5 that preserves the right of the party to go into
6 the District Court when she is not getting the
7 resolution of the order in Probate Court. 4D
8 looks and says, "I've have got an order on John
9 Smith from the Probate Court dated in June, and
10 I've got an order on John Smith from the
11 District Court one dated July." It's the latest
12 order that I am going to enforce, and this is
13 the way we go.
14 I don't know whether that
15 makes sense or not, but it seems that, you know, --
16 I think that I recall that some of the problems
17 and some this had to do with the differences
18 sometimes in the orders between the two courts,
19 but if we have a Master system that's operating
20 in similar guidelines, and those guidelines
21 reiterate the orders, then it's more the
22 question of the enforcement through which court
23 it gets enforced, and I think that if you
24 preserve access given 4D to the enforcement

1 authority, based on the way this order, that's
2 outstanding, that could resolve this.
3 CHAIRPERSON CATHERINE DUNHAM:
4 Susan.
5 MS. SUSAN D. SCHUR: Jon said
6 he didn't want to talk about process. He used
7 the word uniformity. I think what we were
8 afraid of in this Process Subcommittee was the
9 type of case -- forget the legal terminology of
10 jurisdiction. Having a case in two places at
11 once completely confuses people about who was
12 deciding what. Letting the issue of support be
13 decided on the basis of support and not having
14 concurrent jurisdiction on support and the
15 question of custody in two different places at
16 the same time, we are not talking about further
17 down the lie; we are talking about going in at
18 the same time, having separate issues raised in
19 two different courts, having that poor woman
20 from the hills running back and forth at the
21 same time between the two and wanting to make
22 sure that the papers, the case, moved as one
23 case, wherever it was and did not get split in
24 half between two jurisdictions.

1 I think that's important.
2 Also, part of what the 4D function will be, as I
3 understand it, and part of what the Divorce
4 Commission is looking at, which is very
5 elementary at this point, is the need for
6 informational services and not leaving the woman
7 from the hills or the man from the city to
8 themselves to figure out the system. And
9 someplace along the lie between us, I hope in a
10 through the Masters, officers, or through what
11 comes out of the Divorce Commission, people will
12 have a person that they can go to and get
13 information about where they are supposed to be.
14 CHAIRPERSON CATHERINE DUNHAM:
15 Can I ask that we vote on an issue of not
16 jurisdiction, but access, so that the intent of
17 the Commission, which seems to be very clear and
18 preserving access to a uniformed system of
19 justice, can be perserved so we can get that as
20 a precursor to whatever the issue is around the
21 legal way that we make sure that we don't want
22 to contradict ourselves or trip over ourselves
23 in terms of the enforcement, which does come in
24 a later discussion.

1 I don't think that there is
2 any disagreement among the group that people
3 should have access to the court that is most
4 convenient to them and also most responsive to
5 them. The concerns are all around, but the
6 response is when they get to that access point.
7 Is that a fair representation of what we have
8 been discussing? Is any one against access?
9 MS. CONNIE WILLIAMS:
10 Unanimous vote.
11 CHAIRPERSON CATHERINE DUNHAM:
12 I think what I want to try to do is -- you can
13 all scream and scream, if you need to, is to
14 move into the discussion of the Master system,
15 where I think the definition of responsibility
16 lies.
17 JUSTICE SAMUEL E. ZOLL: Joe
18 Lewis used to say, the former heavyweight
19 champion of the world, "They can run, but they
20 can't hide." I think we have to deal with it up
21 front, because it's really critical to
22 everything that we do. It's a very, very
23 important issue. There really isn't anything
24 secondary do it, because it matters -- once you

1 decide that issue, then you can go on with the
2 consideration of the others, but if you decide
3 that, for example, they are going to be
4 exlusively Probate Court cases, then you have to
5 approach, I think, Masters and other things in a
6 different way because all we'll have left is the
7 enforcement criminally of non-support actions,
8 then this Commission doesn't have any authority
9 nor would they be interested in changing the
10 criminal code in Massachusetts and all they are
11 is just simple criminal cases of non-support and,
12 beyond a reasonable doubt, you've got to find
13 that the husband did not support. It's a very
14 simple kind of criminal case.
15 CHAIRPERSON CATHERINE DUNHAM:
16 Jon?
17 MR. JON LARAMORE: Can I try
18 to formulate the issue that I think is on the
19 table, because I think it's ready for a decision.
20 I will try to do this in a way that is not
21 self-serving. I think that's what on the table
22 now is a proposal by Judge Zoll and a proposal
23 by me. I think that Barry's proposal is not one
24 that the District Court and the BMC have

1 expressed any interest in. Judge Zoll's
2 proposal is that everyone agrees in a custody
3 and visitation should be decided in Probate
4 Court, as I understand it. I don't mean to
5 misstate Judge Zoll's position. The question is
6 whether any precedent court order would, of
7 necessity, remain in the District Court for its
8 enforcement, even after that custody and
9 visitation decision is made in the Probate Court.
10 I believe that that is Judge
11 Zoll's position, that the support order set by
12 the District Court should be enforced by the
13 District Court. My proposal is that if the case
14 does go up to the Probate Court, the plaintiff
15 should have the option, and I am willing to say
16 both at the time when she is in the Probate
17 Court and later, if she wants to change her mind,
18 to choose to support that court order in the
19 Probate Court or to go back to the District
20 Court and enforce this court order. I don't
21 mean to misstate Judge Zoll's position.
22 CHAIRPERSON CATHERINE DUNHAM:
23 Is that a fair representation, Judge Zoll, of
24 your position?

1 JUSTICE SAMUEL E. ZOLL: I
2 would say, dividing it exclusively, my position
3 is one that, yes, the District Court ought to
4 prevail throughout, and is capable of being
5 enforced in the District Court. Okay, I just
6 want to bring that out.
7 MR. HUGH F. GALLIGAN: Are we
8 going to end with one order under that system?
9 CHAIRPERSON CATHERINE DUNHAM:
10 One support order?
11 JUSTICE SAMUEL E. ZOLL: Yes.
12 MS. LEAH SPRAGUE: Can the
13 parties support the District Court order and the
14 Probate Court under your view of this?
15 JUSTICE SAMUEL E. ZOLL: No.
16 If the husband was raising the question of
17 visitation problems and/or custody problems, and
18 he wanted to litigate that in the Probate Court,
19 if he wanted to, I suppose he would always have
20 the right to do that. But the District Court
21 order would be retained and that the Probate
22 Court would have to give -- If you wanted to
23 make it one order, would have to give full faith
24 and credit to that District Court support order,

1 except on a showing of changed circumstances.
2 MR. HUGH F. GALLIGAN: Then
3 the changed order would govern?
4 JUSTICE SAMUEL E. ZOLL: Then
5 the changed order would govern, that's right.
6 MR. WILLIAM CARITO: Then the
7 party could go back to the District Court with
8 the Probate Court order.
9 CHAIRPERSON CATHERINE DUNHAM:
10 My understanding is the the only difference
11 between Judge Zoll's suggestion and Jon's is
12 that the person, the traveled lady, could choose
13 the court as opposed to ---
14 JUSTICE SAMUEL E. ZOLL: I
15 don't want to give the unsupported woman the
16 option of deciding where she wants to have the
17 order enforced, not because I want to take away
18 any individual right, but I come at it with the
19 presumption that the emotional state and the
20 ability to decide that unrepresented by counsel
21 is a very difficult one.
22 MS. NIKI FAMIGLIETTI:: I just
23 want to say that I think it is important to
24 preserve in a right because there are people who

1 would choose a unified case over the ease of
2 access, and it leaves that open, which is the
3 benefit of that.
4 CHAIRPERSON CATHERINE DUNHAM:
5 As director of the Commission, I want to
6 question -- I am confused. I would like to have
7 the Commission choose between the Zoll option
8 and the Jon Laramore option, because I think we
9 need to -- there are a lot of other issues to
10 deal with, and I think at this point I am
11 getting clearer, but I want questions if people
12 are not clear on what they are voting on.
13 MR. FRANK ANDERSON: Can I ask
14 the Judge is alimony still strictly related to
15 the Probate Court -- you keep talking about the
16 unsupported woman. You make several references
17 to that. Are you are talking about child
18 support only in the District Court or alimony,
19 too?
20 JUSTICE SAMUEL E. ZOLL: Well,
21 we can do alimony in the District Court. We
22 don't do it very often, but we have statutory
23 authority to do that.
24 CHAIRPERSON CATHERINE DUNHAM:

1 But I think only the last draft of the
2 legislation is in the Master system, anyways, so
3 we're not talking about ---
4 MS. CAROLYN FAMIGLIETTI: If I
5 could just say to Frank, the complicated
6 property division of the divorce does remain in
7 Probate Court.
8 MR. WILLIAM RYAN: I am
9 unclear as to Judge Zoll's proposal how the
10 Probate Court would then, in fact, issue a
11 support order if there is already a District
12 Court outstanding ---
13 JUSTICE SAMUEL E. ZOLL:
14 Change circumstances.
15 MR. WILLIAM RYAN: Or if I
16 could add, if an action for a divorce of
17 separate support is filed in the Probate Court,
18 we aren't talking about those cases. We are
19 just talking about the civil actions.
20 MS. SUSAN SCHUR: What if
21 that action follows?
22 JUSTICE SAMUEL E. ZOLL: That
23 happens today.
24 CHAIRPERSON CATHERINE DUNHAM:

1 One at a time, please.

2 MS. LEAH SPRAGUE: Is the

3 proposal that is being talked about here as to

4 decriminilize all support procedings ---

5 MR. JON LARAMORE: To

6 decriminilize all support setting. All support

7 would be set in civil actions. It could be

8 enforced civilly, but there would still be

9 criminal enforcement remedy in the District

10 Court.

11 MS. LEAH SPRAGUE: Is that

12 called criminal non-support ---

13 JUSTICE SAMUEL E. ZOLL: Like

14 breaking and entering ---

15 MS. LEAH SPRAGUE: Everything

16 is civil here that we are discussing?

17 JUSTICE SAMUEL E. ZOLL:

18 Right.

19 CHAIRPERSON CATHERINE DUNHAM:

20 One more clarification?

21 MR. JOHN BLODGETT: Jon, as I

22 understand, you were saying that this person,

23 the woman, could have the option of, once an

24 order is set in the District Court, have an

1 option of going to the Probate Court for a
2 second order?
3 MR. JON LARAMORE: I am glad
4 you asked that, because that's exactly the
5 opposite of what I am saying. The proposal that
6 I am looking for is a proposal where there would
7 always be one order that would be enforced. The
8 woman would choose after she goes to Probate
9 Court, she would choose whether it was to be
10 enforced in the Probate Court or District Court,
11 and I am saying that she might even later change
12 her mind.
13 MR. JOSEPH BLODGETT: So,
14 then, the basic difference is the enforcement,
15 she can choose where she wants.
16 CHAIRPERSON CATHERINE DUNHAM:
17 One at a time.
18 MS. MARILYIN RAY SMITH: I
19 have a question. Now, in this choice, is there
20 a particular amount of time, where a mother
21 checks a box stating it stays in Probate Court
22 or District Court, or is there another new
23 action to be taken by virtue of going from one
24 court to the other -- does that question make

1 sense?

2 MR. JON LARAMORE: I think

3 it's a question of implementation. I think what

4 we are voting on here is a question of principle.

5 MS. MARILYN SMITH: I think

6 Judge Zoll is suggesting that at the time that

7 the case is in Probate Court that the mother has

8 to make a choice.

9 JUSTICE SAMUEL E. ZOLL: No,

10 no.

11 MS. MARILYIN RAY SMITH: She

12 can do it later.

13 JUSTICE SAMUEL E. ZOLL: I

14 don't want to give her a choice.

15 MS. MARILYN SMITH: You're

16 suggesting in Jon's proposal she would have to

17 make that choice at that time, and Jon is saying

18 she could either make it then or she could make

19 it later, but I -- basically, do this under the

20 circumstances that are existing at the time of

21 the need -- I think it does effect the outcome.

22 CHAIRPERSON CATHERINE DUNHAM:

23 Bill -- and I am going to take a vote around the

24 table.

1 MR. WILLIAM CARITO: One of my
2 concerns with Jon's compromise is that you give
3 the woman the choice. She has an outstanding
4 order from the District Court, presumably set by
5 a Master under guidelines. Now, this custody
6 issue has arisen and she gets shifted to the
7 Probate Court. You give the woman the choice to
8 opt out of the District Court order.
9 MS. CAROLYN FAMIGLIETTI: No,
10 no. It isn't opt out of the order. It's on the
11 jurisdiction. The order stays.
12 MR. JON LARAMORE: The order
13 always stays until it's modified.
14 MS. CAROLYN FAMIGLIETTI:
15 Whether it's in District Court or Probate Court,
16 the order stays.
17 MS. SUSAN SCHUR: I'm really
18 concerned, if the sophisticated group around
19 this table cannot figure out what we're talking
20 about -- we are not ready for a vote yet.
21 MR. MARC G. PERLIN: The
22 reason the sophisticated people aren't able to
23 figure it out is because they are drafting it
24 right in our office, and there is a reason for

1 that. I think the concept is a good one, but,
2 regardless, we have to put it on a piece of
3 paper.
4 JUSTICE SAMUEL E. ZOLL: Why
5 don't we give it one more try -- I yield to Jon.
6 I don't want to presume on your chairmanship,
7 but perhaps Jon could state his proposal, and
8 I'll try to state mine in ten words or less.
9 CHAIRPERSON CATHERINE DUNHAM:
10 Good, okay.
11 MR. JON LARAMORE: Here is my
12 proposal in its current version. The person who
13 starts -- who gets a support order in the
14 District Court, custody or visitation is raised.
15 The custody and visitation issue is decided in
16 the Probate Court, so what she has is a custody
17 or visitation order in the Probate Court and a
18 support order in the District Court. When it
19 comes time to -- I don't know how much detail to
20 get into here.
21 CHAIRPERSON CATHERINE DUNHAM:
22 As little as possible.
23 MR. JON LARAMORE: I am
24 trying to avoid that. So she has these two

1 orders. At some point, either right then or
2 when it comes time for her to enforce that order,
3 she can decide whether that order is to be
4 enforced or modified, if it is going to be a
5 question of modification, in the District Court
6 or in the Probate Court, depending on her
7 preferences. That's my proposal.
8 CHAIRPERSON CATHERINE DUNHAM:
9 Judge Zoll.
10 JUSTICE SAMUEL E. ZOLL: I am
11 in support of a mother bringing an action in the
12 District Court for non-support, and the Judge
13 orders $100.00 a week for support of two
14 children. The husband raises a question of
15 visitation and informs the court that he is
16 going file a motion in the Probate Court
17 relative to visitation and/or custody. He goes
18 to the Probate Court and the Judge in the
19 Probate Court says there is an outstanding
20 District Court order here for support, there are
21 no changed circumstances. The District Court
22 order of $100.00 a week stands, and I award
23 custody to the wife, mother, that's it, period.
24 Three weeks go by, no support.

1 Let's assume for the moment the wife wants to
2 enforce if civilly rather than criminally. She
3 goes to the Probate Court and Probate wants to
4 pick up the papers that says, "My husband hasn't
5 paid me for three weeks." "This is a District
6 Court order, Mrs. Jones. You go back to the
7 District Court, and that's where that order is
8 enforced."
9 She would be told that up
10 front, but that would be the net result. That's
11 where that order has to be enforced. The only
12 difference between in a proposal and the
13 Laramore proposal is that on that day when she
14 goes into the court and says, "My husband hasn't
15 been supporting me," the court, they will then
16 say to her, "You can stay here, Mrs. Jones, if
17 you would like. The Probate Court Judge will
18 enforce this, or you can go back to North Adams
19 and have it enforced and North Adams."
20 My position is that she ought
21 not to be given that choice as an uninformed,
22 unsupported mother, because she can get waltzed
23 around in Pittsfield, or she can get waltzed
24 around in North Adams, but the local culture is

1 in her best interest.

2 MR. FRANK ANDERSON: Judge

3 Zoll, if there was a change in circumstances,

4 who could modify that?

5 JUSTICE SAMUEL E. ZOLL:

6 Probate Court.

7 MR. FRANK ANDERSON: Probate

8 can modify?

9 JUSTICE SAMUEL E. ZOLL: If

10 there's a change in circumstances, they modify

11 it and we're out of the picture.

12 MR. FRANK ANDERSON: On the

13 request of either party?

14 CHAIRPERSON CATHERINE DUNHAM:

15 That is a different matter.

16 MS. RUTH-ARLENE HOWE: Madam

17 Chairman, you have heard statements from Judge

18 Zoll, and I move that we know be given an

19 opportunity to declare our preference.

20 CHAIRPERSON CATHERINE DUNHAM:

21 George had a point.

22 MR. GEORGE KELLY: A point of

23 order. I'm a town meeting member and live in

24 West Springfield, so I hope you will forgive me.

1 We have a big town meeting, and we very seldom
2 try to vote on complicated issues if not
3 everybody is voting on the same thing or does
4 not have the clear prospective which each issue
5 would do.
6 I wonder if we could maybe
7 just jot down on a piece of paper in handwriting
8 and make some copies so that we know what we are
9 voting on, and I think that would help clarify a
10 lot of this situation.
11 CHAIRPERSON CATHERINE DUNHAM:
12 I think I need the sense of the rest of the
13 group.
14 JUSTICE SAMUEL E. ZOLL: I
15 would move the question, Madam Chairman.
16 CHAIRPERSON CATHERINE DUNHAM:
17 It's not a matter of wording.
18 MR. JOHN BLODGETT: As I see
19 Judge Zoll's point in this, that the issue of
20 enforcement is complicated in a sense.
21 CHAIRPERSON CATHERINE DUNHAM:
22 I am going to try -- if you feel that you have
23 not sufficient information to take sides in this
24 matter, I would like you to so record or sustain

1 and do it that way, but I want to try to see how
2 we are doing.
3 All those in favor of the
4 Laramore solution?
5 (Seven votes in favor.)
6 CHAIRPERSON CATHERINE DUNHAM:
7 All those in favor of the Zoll
8 solution?
9 MS. CONNIE WILLIAMS: People
10 voting and favor of the Zoll resolution. The
11 first time I got 11; second time I got 10.
12 JUSTICE SAMUEL E. ZOLL: Some
13 people are voting twice.
14 (Laughter.)
15 (11 votes in favor.)
16 CHAIRPERSON CATHERINE DUNHAM:
17 Any abstensions? Two abstensions. Thank you.
18 Judge Zoll's solution rolls to the rate. We are
19 going to take a five minute break.
20 (Short break.)
21 CHAIRPERSON CATHERINE DUNHAM:
22 We participated in a meeting after the last
23 Commission meeting with Casey to go over some
24 issues, which I think my anticipation of this

1 discussion, we should be able to move through it
2 very expeditiously. This is the major
3 recommendation from the Expedited Process Subcommittee.
4 I also fully intend to deal with such issues
5 before lunch. Your motivation should be succint
6 and to the point of your remarks and critcisms.
7 MR. JON LARAMORE: Let me --
8 we talked a good deal in here about the outlines
9 of the Master system that the subcommittee
10 proposed already. I think most of you have
11 heard it, either in one of these meetings or
12 some other subcommittee meeting, so I want still
13 to very briefly describe what the Master system
14 is that we are setting up and then to outline
15 what I think is the only issue that we have to
16 make a decision on, as I understand it.
17 First of all, we are talking
18 about a Master system that will deal with all
19 the cases that involve children in the setting
20 of monetary order, whether that order is
21 denominated as child support or spousal support,
22 because in either case it has to deal with the
23 money available to the children, and that's our
24 concern. The Master will sit in all the courts.

1 They would be chosen by a committee that's
2 described in our legislation that involves
3 judges and non-judges, who will set their
4 qualifications and choose a list of people who
5 will serve as Masters, and then those Masters
6 will be assigned as to where they fit by the
7 Administrative Justice of the various court
8 departments.
9 They would be governed by
10 rules that will be promulgated as uniform trial
11 court rules. Those rules will be designed to
12 encourage and facilitate people to represent
13 themselves. They will hear the child support
14 portion of the cases, the monetary portion of
15 the cases, and other issues of cases like
16 custody and so forth will still be decided by
17 judges. Now, that's the basic outline of the
18 system, and I am happy to take questions on it,
19 but let me first tell you what I think is the
20 issues that's up for grabs today. That's the
21 issue of how judges will approve or review
22 decisions of the Master.
23 Let me tell you what the
24 Committee's proposal for that is. The

1 Committee's proposal is that there would be two
2 avenues by which cases can be reviewed. First
3 of all, all decisions would go to a Judge. The
4 Judge would look at them, and we think approve
5 them. The decisions would carry some
6 presumptive weight, but if a Judge thought there
7 was some problem with the case, he could call
8 the parties back in and review it in a new
9 hearing.
10 Second. Once the Judge
11 approved the decision of a Master, if one of the
12 parties was dissatisfied with it, he or she
13 could ask for a review by the Judge. So, that's
14 the Committee's proposal. Now, Casey Hoffman
15 has proposed a different review system, which I
16 will outline for you. The welfare department
17 has very generously put all this on paper so
18 that you will be able to see it as well as hear
19 my description of it, but I want to give you my
20 description before you see it, because,
21 otherwise, I don't think you will give it your
22 full attention.
23 Casey's proposal is that if
24 the parties -- I'm sorry. The Master renders

1 his decision, that within the child support
2 guidelines, that is as called for by the
3 guidelines, the only review would be by appeal
4 that is taken by one of the parties, and that
5 appeal would be heard at some later time after
6 the Master made his decision. They will have to
7 come back to court on another day. If the
8 Master made a decision outside of the guidelines
9 and there was an appeal, they would be entitled
10 to a hearing on that question the very same day
11 or as close in time as possible to the time that
12 the Master makes his decision; and, also, in the
13 Casey system, the Master's hearing would have to
14 set some presumptive validity, and the Judge
15 would have to find a reason to change -- find
16 and state a reason to change the Master's
17 decision.
18 So those are, and for myself,
19 not speaking for the Committee, I am perfectly
20 happy with Casey's proposal. I think it's
21 somewhat less complex. And, Bill, if you want
22 pass those things out now, so that people can
23 see those two, as well as the Welfare's proposal.
24 (Passing sheets around.)

1 In looking at the
2 subcommittee's proposal, I think we have a
3 problem here. It doesn't look expedited.
4 Something that's a problem, and the way that we
5 best would demonstrate this is to go through the
6 subcommittee proposal line by line and map out
7 the system, as proposed.
8 JUSTICE THEODORE A. GLYNN:
9 This is Casey's proposal?
10 MR. WILLIAM CARITO: No.
11 There are three different proposals here. Let
12 me just point out in what is listed as
13 subcommittee proposal, there is a typographical
14 error, couple of typographicals. The line that
15 goes from the Judge's decision on the right,
16 down at the bottom, that should be an arrow up
17 to "approved by the Judge", and then the
18 asteriks here, that should say -- well, this is
19 the effect of the draft language. As we
20 understand it, the Committee did not intend --
21 let me just go through this, as we saw it.
22 Under the subcommittee
23 proposal, the Master issues a temporary order,
24 which goes to the Judge. The Judge has two

1 options. He can either approve the order in
2 which case what is on the left-hand column
3 becomes the procedure. The agreed party will
4 appeal. There's a hearing before the Judge, and
5 the Judge renders his decision. When things got
6 really complicated is what happens when the
7 Judge is reviewing this, might not like the
8 Master's decision. Well, what is provided for
9 in the draft is that the Judge must notify the
10 parties that he is considering alterations.
11 He doesn't make an automatic
12 alteration. He is considering alterations. He
13 then notifies the parties to come back. They
14 hold a hearing and the Judge issues his decision.
15 In looking at that, it seems that in either case,
16 a very likely situation is that these are cases
17 we are going to end up hearing before the judges,
18 and I think we have some concern, that if any
19 instances the hearings will be dictated by the
20 judge's view of the Master's decision, rather
21 than the party's view of the Master's decision,
22 and since in both situations you ended up with a
23 hearing before the Judge, we proposed or had
24 ready to propose what you see is Alternative 1,

1 in terms of whose proposals they are. That's
2 the Welfare Department's initial proposal, which
3 is that a temporary order is entered by a Master
4 and the aggrieved party has the right of appeal,
5 and the Judge can then hold a hearing.
6 In the discussions with Casey,
7 Casey looked at the last meeting and said, "Wait
8 a minute. This isn't how I viewed the
9 subcommittee proposal." And we explained to him
10 that's how it was written, and he said, "Well,
11 let me tell you you what I am suggesting."
12 After this, a hearing before the Master and the
13 Master issues his temporary order, and the
14 Master must determine in issuing his order that
15 the order falls either within the guidelines or
16 outside the a guidelines, and this is what
17 determines what happens to the orders next.
18 If the Master determines that
19 the order is within the guidelines, the Judge
20 will sign it that same day, and the parties will
21 have a right of appeal and to a hearing before
22 the Judge. If the order is outside the guidelines,
23 as determined by the Master, the party can
24 appeal immediately for a hearing -- either party

1 may appeal immediately for a hearing before the
2 Judge that same day and then the Judge will
3 render his decision. I think, as I understand
4 Casey rationale, I don't mean to misstate him,
5 but that any order issued by a Master that falls
6 outside the guidelines should have some recourse
7 to the parties to a quicker review than orders
8 that fall within the guidelines.
9 One of the nicest things about
10 Casey's proposal is that it sets up some
11 performance review situations with Masters. The
12 Masters will have the responsibility, Number 1,
13 for interpreting the guidelines. Number 2,
14 interpreting that the order goes within the
15 guidelines, so the party upon appeal -- in one
16 of the appeals that he had raised said, "Well,
17 the Master said that order was within the
18 guidelines." This wasn't really within the
19 guidelines. The Judge, in reviewing the
20 Master's decision on appeal could, in fact, make
21 that determination, and could begin to track the
22 Master's performances if, in fact, as they
23 issued these decisions, the Judge is saying,
24 "Sorry, pal, you are not issuing decisions

1 within the guidelines." We can begin to review
2 the Master's performances in that way, and I
3 think the same thing would fall for those
4 outside the guidelines.
5 Now, given some of the
6 discussions we had this morning, I would suspect
7 that orders outside the guidelines by the
8 Masters would primarily fall into categories of
9 orders that suspended wage assignment, rather
10 than -- there would be some other factors, I am
11 sure that they would consider, but I would
12 suspect that given the guidelines ---
13 CHAIRPERSON CATHERINE DUNHAM:
14 Let's not get into more than what we have to.
15 MR. WILLIAM CARITO: Is that
16 clear to everybody, how these work?
17 MR. MARC G. PERLIN: First of
18 all, I think the Commission ought to understand
19 we are not necessarily saying at any point that
20 if there a a suspended income assignment order,
21 that it would, indeed, be outside the guidelines.
22 That remains to be seen, and I don't think we
23 have the right to assume that. We're talking
24 about a Master considering the fact is such that

1 the percentages of the guidelines are set out
2 are not followed. I have a question on
3 Alternative 2. On the right-hand side of
4 Alternative 2 we have Casey Hoffman's proposal.
5 What happens if there is an order outside the
6 guidelines and no one appeals?
7 CHAIRPERSON CATHERINE DUNHAM:
8 It goes forward.
9 MR. MARC G. PERLIN: It's not
10 signed by the court.
11 MR. WILLIAM CARITO: The Judge
12 sign the order if there is no appeal by the end
13 of the day.
14 CHAIRPERSON CATHERINE DUNHAM:
15 Okay.
16 MR. FRANK ANDERSON: Cathy,
17 on any one of these that is accepted, can I make
18 a motion that we allow for an expedited process
19 for modification, as well as setting of the
20 support order?
21 CHAIRPERSON CATHERINE DUNHAM:
22 It is in the draft language, I believe, in the
23 same process. Questions? George.
24 MR. GEORGE KELLY: On that

1 same point, yes, it is in the legislation, but
2 as I remember, if my memory serves me right, it
3 is, that by agreement there can be modification
4 before the Master, only if the parties agree.
5 If one party agrees and one disagrees -- let me
6 clarify that. Another problem that you have in
7 this whole system, many, many times, people who
8 are in this process who have the greatest
9 difficulties are the more unsophisticated people,
10 maybe less financially well-off people.
11 To appeal in this state to a
12 Probate order, anyways, is a very costly, a very,
13 very hard process. In fact, few divorce
14 practitioners, who do divorce work regularly,
15 handle appeals. They usually have some
16 specialist that they refer that to. I would
17 hope that in the sense of justice and fairness,
18 that we would see that all parties get their day
19 in court. I mean, the Master is going to handle
20 the bulk of the work. Maybe some of the more
21 complicated issues really need to be before a
22 Judge. The Master would handle the start of it
23 and, you know, maybe the Judge would want to
24 consider some of those more complicated issues

1 While it may be very
2 expeditious, and I think Judge Zoll said this
3 before, to have a computer behind the bench to
4 set support orders, I think we have a lot of
5 wisdom in these courts. We need to tap into
6 that wisdom in order to ameliorate some
7 decisions that maybe on the surface look just
8 fine, but when you really get into them, there
9 could be horrendous injustice and unfairness
10 involved. I would be very interested to see if
11 the modification provisions are in here, because
12 I think it's a very cruel thing to -- I don't
13 see it in here.
14 MR. JON LARAMORE: It's not
15 on this page because this page doesn't deal with
16 what subject matters are handled in the
17 expedited process, but I can say that any
18 complaints of modification are in the expedited
19 process, period. If I could just say one other
20 thing, as to the other issue that George raised,
21 in either the subcommittee proposal or
22 Alternative Number 2, there is that opportunity
23 for a Judge to grab a case that he thinks the
24 Master handled incorrectly and to deal with it

1 on his own.

2 There is not that opportunity,

3 and the second alternative, because the only

4 time the Judge sees the case under this

5 alternative is if one of the parties agree.

6 MS. MARILYN SMITH: I think

7 what the Master is doing is trying to clarify

8 these problems. In the case of the divorce,

9 when you go to the final decision involving the

10 division's assets, that matter goes before the

11 Probate Court Judge. The temporary order that

12 has been sent to the Master is then part of the

13 entire package that the Judge reviews. In the

14 case that you are talking about where there are

15 complicated matters, those are going to go

16 before a Judge, and certainly to the extent in a

17 support and property division overlap there is

18 an opportunity for a Judge rather than a Master

19 to pass on that.

20 As I understand it the way the

21 modification works is that in the first instance,

22 when the Complaint for Modification is filed,

23 the temporary order is set by the Master and

24 then if the parties reach an agreement on the

1 substantive issues of the modification, the
2 Master can accept that agreement and make it a
3 final modification order; but if there is going
4 to be a trial, because if there is no agreement
5 and you do have to go beyond the temporary stage,
6 if that issue goes in front of the judge, again,
7 if you have complicated matters that people
8 don't agree upon, it's a full scale trial.
9 MR. JON LARAMORE: There are
10 so many changes that it's hard for me to
11 remember, and I can't. I just want to address
12 an issue that George raised that people might
13 not be clear on, and that's the matter of appeal.
14 What we were doing here is allowing people to
15 proceed pro se, or with a lawyer, to have a
16 review before a Judge. What we are saying is
17 that after that, then you go into the normal
18 appellate process. I don't think you should
19 clarify that. We aren't going to give the judges
20 jurisdiction of an appellate court.
21 MR. GEORGE KELLY: We have
22 three proposals before us. One of the proposals,
23 I thought, addresses that problem, where the
24 Judge would prefer it. We are going to have a

1 new system of Masters. Some of them may take a
2 while to get a handle on a job, and I'm
3 concerned about that.
4 MR. FRANK ANDERSON: If I
5 understand, Marilyn said modification must go
6 before a Judge. Again, just to clarify, I would
7 like to make the motion in a modification ---
8 MS. MARILYIN RAY SMITH: I
9 didn't say that. In the first instance, the
10 procedure is that the party files a Complaint
11 for Modification. What typically accompanies
12 that Complaint is a motion for a temporary order
13 under the new Complaint of Modification, so the
14 temporary revisions of the existing order, that
15 goes before the Master, and if after that
16 temporary order the parties are able to reach an
17 agreement, they can go back to the Master and
18 say, "Here's my agreement," and the Master
19 basically takes that agreement and then, through
20 the administrative process, it travels to the
21 judge's desk for assignment. That's when an
22 agreement has been reached.
23 There are circumstances where
24 a temporary order is issued on modification. If

1 the parties are unable to resolve the underlying
2 issues, they want a trial, they want evidence,
3 they want witnesses, they want a full three-day
4 hearing. That goes in front of the judge and
5 that is the order for modification. Is that
6 your recollection?
7 MR. BARRY WALKER: I like
8 Alternative Number 2, Casey's proposal, with one
9 alteration. That is on the subcommittee's
10 proposal, the second part, that is the case
11 wherein the Judge, himself, feels that the order
12 requires alteration. That is absent from
13 Casey's proposal, and I would like to add that
14 power to the court.
15 MR. WILLIAM CARITO: Can I
16 say why that's included? We discussed that with
17 Casey. Casey said, "Look, if the Master reaches
18 an order and makes a determination that the
19 order is within the guidelines and it goes to
20 the Judge he is, under what he proposes,
21 required to sign it that day, any Judge regardless
22 of what that says, can say to the Master, "Look,
23 you made a mistake here. You blew it. We will
24 sign the order, but I want those parties back

1 before me within two weeks." He said this
2 doesn't have to be, because the Judge, himself,
3 has that power under this review. It's implicit --
4 It's the Judge's power, anyway, that while he
5 signs the order that day, he can instruct the
6 Master to bring the parties before him, whether
7 they appeal or not, to hear the case and make a
8 final decision, and it's not required to be
9 stated within the context of the legislation
10 because he felt that was inherent in the
11 judicial power, regardless.
12 MR. BARRY WALKER: We're
13 writing everything else out. I would be a whole
14 lot happier -- notwithstanding that it's
15 inherent, I would be a lot happier if it was
16 included as part of the process.
17 CHAIRPERSON CATHERINE DUNHAM:
18 We will risk redundancy.
19 MS. LEAH SPRAGUE: Whether or
20 not it's within the guidelines.
21 MS. SUSAN SCHUR: The problem
22 with that, the basic problem is, as I understand
23 it, is one of the accountability or
24 responsibility of the Master, and as long as you

1 build it into the legislation an automatic
2 review, whether it's within or without the
3 guidelines, you are really going back more to
4 every single case being reviewed by a Judge
5 rather than the expedited process.
6 MR. BARRY WALKER: I would
7 like to believe that a Judge, no matter how
8 expert the Master is, would never sign a blank
9 order without reviewing it, never. I don't
10 think you should take away that power from the
11 courts. I don't think you should.
12 CHAIRPERSON CATHERINE DUNHAM:
13 Judge.
14 JUSTICE SAMUEL E. ZOLL: The
15 thrust of the judge's issue again comes up in
16 this situation. Just a couple of comments, all
17 right? One might complicate this a little bit
18 further. Am I assuming, Madam Chairperson, that
19 we are going to defer a decision at the moment
20 on the selection of Masters, salaries for
21 Masters, and certification of Masters. Are we
22 going to decide that following the decision on
23 the procedure?
24 CHAIRPERSON CATHERINE DUNHAM:

1 Yes.

2 JUSTICE SAMUEL E. ZOLL:

3 Given that then, may I make a couple of

4 suggestions with regard to all of these

5 proposals, whether it's subcommittee or the

6 Casey Hoffman proposal, both of which seem to be

7 the ones that are attracting the most attention.

8 Number 1, I would like to

9 preserve with Judge the authority to take any

10 case that is pending before the Master. I think

11 that the Master is -- really, what you're doing

12 is you're setting up another layer of judges,

13 however you slice it. They are judges for a

14 very limited purpose, but they are judges.

15 Their appointment process does

16 not come close to what the appointment process

17 is for judges. The judge is ultimately

18 accountable, regardless of whether we are

19 talking the accountability of the Master.

20 I think it's important that

21 that gubernartorial appointee, and with

22 everything that goes with it, ought to retain

23 the authority to say, "Look, this is a

24 complicated case. I have the papers here," and

1 these judges review the cases before they go on
2 the docket for the day. This is a case that I
3 think I ought to hear, whatever the reason might
4 be. He takes that case, and if there is an
5 appeal from his decision, we can decide where
6 that's going to go. That's Number 1. So,
7 that's the front end of the process, within the
8 process, and I think the DPW and the District
9 Courts disagree on this, but even if there is an
10 order within the guidelines, I think that in the
11 vast majority of cases the Judge will sign it,
12 anyway, but if the Judge who looks at the case,
13 looks at the Master's decision and he decides
14 that it's arbitrary, unreasonable or capricious,
15 to use the language we have in the
16 administrative law section that relates to sort
17 of Masters and other cases, whether it's
18 employment security cases or things of that
19 nature. I think the Judge ought to retain
20 specific authority to modify that order.
21 It doesn't have to necessarily
22 bring the parties in, but let's assume he
23 modifies that order. Notice goes out to the
24 parties. The parties then have the right to

1 exercise their appeal from that judge's decision,
2 and that case can be heard by a judge, too. It
3 won't happen in many cases, but I don't think we
4 can make the presumption that the Master's
5 decision carries with it total and complete
6 validity without judicial review, regardsless of
7 whether he is inside the guidelines or outside
8 the guidelines.
9 I am not worried about the
10 increased traffic that it's going to cause for
11 the court because it's going to be such an
12 insignificant number, we can handle it.
13 The third and last item is the
14 indication here is that everything is same-day
15 service. We are not McDonald's, you know, in
16 that sense. The 209A cases now have absolute
17 priority, particularly by statute. Care and
18 protection cases, the young children have to
19 have their cases to be taken first. We have
20 serious offenders, who are in the dock. We have
21 to clear them out first.
22 We have all kinds of bail
23 issues, and I use the Lawrence case court, for
24 example, where Monday morning they will have 35

1 spousal abuse cases, about 35 people in the dock,
2 and there is no way that the Judge can hear.
3 You can't walk him over from the Master's lobby
4 to the Judge's lobby to hear that case, so I
5 don't want to create any expectation to the
6 general public that we are going to give them
7 same day service because we can't deliver.
8 UNIDENTIFIED SPEAKER: The
9 whole point I think behind expedited process is
10 expedition, and there is absolutely no question
11 at all that whatever formulation is adopted, it
12 is imperative that a Judge have the ability in
13 appropriate cases to review and to have the last
14 word, and I don't think any of the three
15 approaches is in disagreement with that basic
16 philosophy. I would observe, however, that the
17 more institutionalized an assumption, that there
18 will be judicial review on every case, is the
19 more likely judicial review on every case, the
20 more expeditious the process becomes.
21 I would suggest that if a
22 Judge, on his own motion, has the power to
23 change a Master's hearing, really with nothing
24 but the Master papers before him, that you are

1 almost begging the Judge to involve himself in
2 something that there hopefully will only be a
3 need for the Judge to involve himself in. To
4 have judicial review, and the possibility is
5 appropriate, to encourage it on a routine basis,
6 I think cuts against the whole concept of the
7 expedited process.
8 MS. SUSAN SCHUR: I think
9 Judge Zoll gave the best reasons, himself. Part
10 of the whole effort to expedite the process and
11 to utilize the Master is to bypass the judicial
12 system, and so the reasons that you gave for not
13 doing same-day service are perfectly valid
14 reasons. They are also valid reasons for
15 putting more faith and more dependence on the
16 Master and his decision.
17 I am a little confused, Judge
18 Zoll, because you said, you know, you want to
19 avoid such decisions, but if we are dealing with
20 guidelines and they're within the guidelines, it
21 seems to me you have avoided that. And it seems
22 to me more likely that if you don't give
23 adequate credence to the guidelines, you're more
24 likely to have arbitrarial decisions.

1 JUSTICE SAMUEL E. ZOLL: You
2 can be within the guidelines and still be
3 arbitrary. For example, the unsupported mother
4 can say that John Jones is earning $250.00 a
5 week, and the Master can say, "Well, I'll accept
6 that. I won't hear anything else. Next case."
7 "Well, Judge, I am not making
8 $250.00 a week. I am making $110.00."
9 "That's a $250.00 a week
10 support order. Next case."
11 MS. SUSAN SCHUR: I am
12 concerned about undoing what has led up to the
13 formulation of the Master process. I think the
14 potential success of the Master process is
15 dependent upon giving sufficient credibility to
16 the decisions of the Masters, just in having the
17 Master system work. I think the potential is
18 there anywhere along the line, whether it's with
19 the Judge or with the Master, to want to hurry
20 on to the next case. That's going to have to be
21 evaluated as we move along, but if we make the
22 Master sufficiently accountable, just as much as
23 we make the judges sufficiently accountable, we
24 should not have the kind of treatment that

1 you're talking about that requires review in
2 every case.
3 MR. GEORGE KELLY: One of the
4 things that's been alluded to before is
5 McDonald's, and I think that's a very good
6 analogy. McDonald's is a quick, easy place to
7 get a quick sandwich when you don't have time to
8 go someplace to get a decent sandwich. I am
9 concerned that just because something is quick
10 and easy -- I am concerned about questions of
11 fairness, and I could think of a case that would
12 fall right within the guidelines, where somebody
13 was a paraplegic or maybe under lien from the
14 I.R.S. We have all kinds of problems that the
15 Masters are not even going to be given the
16 purview to consider.
17 We have unnamed Masters and
18 unnamed salaries and unnamed training, who are
19 going to be providing unnamed guidelines, and
20 the guidelines are not even developed yet and
21 may become a major point of turn of this
22 Committee, and we are apt to say, yes, we are
23 going to adopt this theory, and yet we only have
24 the vaguest idea of how this theory is going do

1 work. Whatever our feeling with the judges,
2 whether it's positive or negative, I think that
3 we know the judges and we know that they are
4 capable of exerting a great deal of good
5 influence and prime justice, and we need to be
6 mindful of that before we vote.
7 MS. MARILYIN RAY SMITH: Judge
8 Zoll mentioned the preserving of authority of
9 the judge, to take that case and just pull that
10 file. I don't think that's a good idea because
11 I think it leads to the possibility of people
12 wondering about some undue influence. I think
13 the system that has been proposed allows a great
14 deal of review by the judges. These Masters'
15 order, they come before the Judge for a sign-off.
16 In any event, the order is signed by a Judge
17 rather than signed by a Master, and any time
18 there is an aggrieved party who is making every
19 effort to get a hearing by the Judge as quickly
20 as possible and it's, essentially, a new hearing.
21 The wife has the opportunity
22 to offer new evidence and is not barred from
23 bringing in new witnesses and new documents to
24 introduce, and whatever, so they really do get a

1 chance to have a full hearing under what we
2 propose -- it is a systematic way that every
3 case is going to be treated and we're not going
4 to have certain cases because the file is thick.
5 MR. HUGH F. GALLIGAN: The
6 federal requirements are to limit that
7 participation to the review side, that we would
8 have a problem with selecting cases from the
9 expedited process.
10 CHAIRPERSON CATHERINE DUNHAM:
11 Thank you. I will say that, just for
12 clarification, we never assume that judges sign
13 anything without reviewing them. I will add
14 that for clarification, that the Judge reviews
15 and signs or reviews and doesn't sign. That's a
16 prerogative that's perserved by the judge in any
17 case.
18 MR. BARRY WALKER: Can he alter
19 it? What happens if he doesn't agree?
20 MR. WILLIAM CARITO: That's
21 not a case in today's proposal. That is, in
22 fact -- I mean in Casey's proposal, if the order
23 is within the guidelines, the Judge will sign it
24 that day. Judge Zoll earlier had proposed that

1 one of the key problems with the subcommittee
2 proposal is this whole thing of alterations be
3 considered by the Judge, and Judge Zoll proposed
4 that the judge get an order and either approve
5 it or modify it that same day. I don't know
6 whether there would be some concern about a
7 Judge modifying an order issued by a Master that
8 day, after not having heard it. I think that
9 might create some problems also. I think the
10 Casey proposal, which tracks within or outside
11 the guidelines does, in fact, give the judge the
12 option, as Casey indicated, to sign the order,
13 but and some of those cases where perhaps
14 something catches their eyes, that is a ---
15 JUSTICE SAMUEL E. ZOLL:
16 There's nothing in there, it doesn't say it.
17 MR. BARRY WALKER: May I
18 suggest that in the event that the court reviews
19 the order of the Master and is dissatisfied with
20 that order, that the court be given the power to
21 refer the case back to the Master for further
22 findings and to have a second hearing before the
23 Master before the Judge signs it so that the
24 judge is then satisfied.

1 MR. JON LARAMORE: It's okay
2 with me. I don't think it goes against the
3 goals of the subcommittee. The only question I
4 would have is whether the Master's order will be
5 valid in the interim.
6 JUSTICE SAMUEL E. ZOLL: The
7 answer will be yes. I am sorry, I didn't mean
8 to interrupt.
9 Two concepts, I think, Madam
10 Chairperson, and one of them is in our rush to
11 do justice here, in terms of getting money on
12 the table for people, I hope we are not going to
13 overlook the element of due consideration of
14 these cases. This is not -- I am getting the
15 feeling that is a bit of the Indianpolis Speedway.
16 (Laughter.)
17 JUSTICE SAMUEL E. ZOLL: In
18 terms of this process, I think it's very
19 important. And the other aspect of it is I am a
20 little bit concerned that people are attaching
21 some, at least somewhat inflated confidence in
22 the Master's system, that they don't extend to
23 the judges, and that is the judge's decisions
24 are always reviewable. There aren't really any

1 decisions at the District Court level and which
2 a judge's decision is absolute, and yet we want
3 to give Masters decisions, allow them to make
4 decisions, which are supposed to be accepted in
5 total without review.
6 CHAIRPERSON CATHERINE DUNHAM:
7 I think you just clarified that, I hope, by what
8 you and Jon just agreed with, an acceptable
9 process for review and referral back to the
10 Master, with a temporary order.
11 MR. WILLIAM CARITO: Also,
12 that appeal process by the parties is within
13 that same court, not to the next level. It's to
14 the Judge of the District Court or the Probate
15 Court, wherever that order is entered. The
16 appeal that is specified here is not an appeal
17 to Superior Court.
18 MS. MARILYIN RAY SMITH: It's
19 appealing on the order. It's a new hearing.
20 JUSTICE SAMUEL E. ZOLL: I
21 don't mean to be a pest, but Marilyn raises that
22 issue, and I think everybody ought to understand
23 that, that if the Master makes a decision
24 outside the guidelines and there is an appeal to

1 the Judge, right, that that appeal to the Judge
2 is a full hearing. It's a de novo hearing.
3 MR. JOHN BLODGETT: What if
4 there is an appeal by another party?
5 JUSTICE SAMUEL E. ZOLL: I am
6 not sure that that was clear.
7 SPEAKER FROM THE FLOOR: What
8 if there is an order within the guidelines in
9 one of the parties ---
10 CHAIRPERSON CATHERINE DUNHAM:
11 We are asking each other five questions. Let me
12 ask that we go in order.
13 MS. SUSAN SCHUR: I have a
14 question about the agreement, where a Judge
15 reviews and can refer back, what happens to the
16 process, where are the parties if they assume
17 that when the Master's decision reaches the
18 judge, he is going to sign it. It gets to the
19 Judge. The parties have left, thinking they
20 have an order. The Judge says uh-uh and comes
21 back to the Master to start all over again and
22 what have we done in the process, and what time
23 requirements are we ---
24 MR. BARRY WALKER: The order

1 stays in effect without the judges's signature,
2 pending a re-hearing by the Master of the facts
3 in the case. I believe that's what Jon is
4 saying.
5 MR. JOHN BLODGETT: As long as
6 the order stands, until that judge either signs
7 or rejects it ---
8 JUSTICE SAMUEL E. ZOLL: No.
9 It doesn't go into effect until he signs it.
10 MR. BARRY WALKER: Except
11 where there is a case and he refers it back.
12 MR. JOHN BLODGETT: That's a
13 point then, because it could be two or three
14 days before he signs it and what is going to
15 happen in the meantime? From my point of view,
16 if the Master makes the order, that order should
17 go into effect immediately. If the judge then
18 decides two or three days down the line that he
19 wants to send it back, then he has the option of
20 doing that.
21 MR. BARRY WALKER: But the
22 order stands.
23 JUSTICE SAMUEL E. ZOLL:
24 Philosophically ---

1 MR. WILLIAM CARITO: Can I
2 just take the stand, because I think we're all
3 working on Alternative 2. Maybe I am wrong, but
4 it sounds to me what we are saying, is if the
5 Master issues a order within the guidelines, it
6 goes to the Judge and the Judge will sign the
7 order that day, possibly at the same time,
8 referring that case back to the Master for rehearing
9 on facts, but the order would not be in effect,
10 but the Judge has that option of saying, "Order
11 in effect but case referred back to the Master
12 for rehearing," so we track down the left side
13 of this. The Master would -- if the order is
14 that the judge signs that day, the parties could
15 appeal, and it would go to either party for
16 appeal.
17 It goes a full hearing before
18 a Judge, a de novo hearing, and then the Judge
19 renders a final decision, but those that go back
20 to the Master for a re-hearing, the Master would
21 render a new decision, which would go to the
22 judge and the Judge and the order would still be
23 in effect. The Judge could essentially keep
24 telling that Master to go back and get it right,

1 but at least the burden is on the Master, I
2 think, if that makes sense. Now, if the order
3 is outside the guidelines, I think we have to
4 clarify this one.
5 Either party must appeal that
6 day the order before it goes to the Judge for
7 signature. If they don't -- if they don't
8 appeal, then it goes to that process of the left
9 side of the column. If they do appeal it, then
10 there is a hearing before the Judge the same day,
11 which may be unreasonable to say, but the order
12 would stay in effect and there would be a
13 hearing before the Judge the next day, as
14 expeditiously as possible, and then the Judge
15 will render a decision. Is that a reasonable
16 statement of what would happen?
17 MS. LEAH SPRAGUE: If it
18 doesn't make any difference whether it's within
19 or outside the guidelines, I don't know why we
20 should make a distinction.
21 MR. FRANK ANDERSON: I think
22 Judge Zoll started bringing up a very good point.
23 I don't think this allows for a de novo trial.
24 We requested subcommittee hearings, and we are

1 suggesting to protect everyone's rights. I
2 think Marilyn started to address that question,
3 that it is basically a limited appeal. Does it
4 call for a a completely de novo trial?
5 MS. MARILYIN RAY SMITH: One
6 statement that I think needs to be made, a de
7 novo hearing is a totally clean slate, and the
8 case starts from scratch before the Judge. What
9 we're proposing here is that the Master orders --
10 the case starts with the Master's order from the
11 judge. That makes it slightly different from a
12 de novo hearing. I think that the substance has
13 a distinction in theory and in practice. Once
14 it's before the court, the court is going to
15 treat it -- basically hear all the evidence, to
16 give an opportunity to the parties to give
17 testimony. If the judge doesn't like the Master's
18 order and it doesn't have very much force to it
19 but it does allow the piece of paper of the
20 Master to be presented in front of the judge
21 before the hearing starts.
22 MR. MARC G. PERLIN: I want to
23 go back to the subcommittee's original proposal.
24 We talked in great length about some of these

1 issues, and I am still uncomfortable with
2 bringing them back to the Master. I don't see
3 why, if the court decides not to accept the
4 Master's decision, we can't retain it in the
5 original form and have the hearing before the
6 court either. I heard a comment before about
7 sending it back to the Master the second time,
8 the third time, and the fourth time. Let's
9 avoid that. Have the court hear it. I think
10 it's going to be a small number of cases to
11 start with, and it might be just as easy at that
12 point to leave the original system and have the
13 court make that decision.
14 MR. FRANK ANDERSON: I think
15 that the distinction, to address Frank's concern,
16 I think the burden is on the party appealing to
17 show why the decision of the Master shall not
18 stand. That's what we are talking about.
19 MR. JON LARAMORE: What
20 evidence ---
21 MR. FRANK ANDERSON: I am just
22 trying to address your concern. I am just
23 requesting, and you don't have to go along with
24 it. I would like to see a de novo. The

1 discretion is with the judges. I would like to
2 see automatic de novo. I would like to see a
3 Judge hear all of the facts.
4 MS. MARILYN RAY SMITH: It's a
5 legal technical procedure. It's the Master's
6 piece of paper in front of the court.
7 CHAIRPERSON CATHERINE DUNHAM:
8 Can I ask for another -- I want us to choose
9 between, at this point in time, between the
10 subcommittee's proposal and Casey Hoffman's
11 proposal; is that possible?
12 MR. JON LARAMORE: I don't
13 know because so many suggestions have been made
14 about modifying, at least Casey suggested it.
15 At least as I see it, I guess what I end up
16 doing is recapping -- I am told by one of the
17 Marcs, sitting beside me, that the only pending
18 amendment to Casey's alternative is whether
19 there should be remand or whether there should
20 be a new hearing before the judge.
21 Given the subcommittee's
22 deliberations, and as was just given to you by
23 Marc Perlin, it seems to me that the system
24 would be more expeditious if it were not a

1 remand, but rather the judge would bring the
2 people in as long as the Master's order was in
3 effect and until that happened. I think it
4 would happen faster if the Judge did it. If
5 that's okay, then we are really looking at
6 what's on paper here.
7 MS. SUSAN SCHUR: I move that.
8 MR. JOHN BLODGETT: I think
9 what you're saying is very important, and that
10 is that the Master's order stays in effect.
11 From my point of view, I feel all three of them
12 are good. As long as the Master's order stays
13 in effect, however the process is worked out,
14 then that lends itself expeditiously to the
15 nature of the whole thing. The Master hears the
16 case and sets the order. What happens after
17 that from my point of view, it isn't very
18 important, but I think that that has to be
19 understood in all three proposals, and I am not
20 sure if that is understood in all three
21 proposals.
22 MS. SUSAN SCHUR: I think we
23 are dealing with one proposal and that's with
24 Alternative 2, and I would make a motion to try

1 to resolve this, which basically is dealing with
2 Alternative 2 in the framework of the Judge
3 instructing the parties to come before him,
4 after reviewing the Master's decision, with the
5 Master's decision standing.
6 CHAIRPERSON CATHERINE DUNHAM:
7 Discussion as to suggestions that we move this
8 particular point ---
9 JUSTICE SAMUEL E. ZOLL:
10 Whether it's outside or inside the guidelines,
11 right?
12 MS. SUSAN SCHUR: I am in the
13 left column. The other one is clear.
14 MS. LEAH SPRAGUE: I didn't
15 understand with all of the discussions about the
16 various modifications and proposals that it made
17 any difference, really, whether it was within or
18 without the guidelines, and which case you are
19 over to the subcommittee proposal.
20 MR. JON LARAMORE: That
21 should be the only difference.
22 MR. WILLIAM CARITO: There is
23 one difference, and that is the right of the
24 parties to appeal the Master's decision outside

1 the guidelines.

2 JUSTICE SAMUEL E. ZOLL: So

3 two things, in the spirit of fairness. It's

4 tough to be honest, but I guess we have to be.

5 In the statute, it indicates that the Judge can

6 propose statute, he can sustain the proceedings

7 if he wants to. So that I think everybody here

8 ought to be so informed, regardless of what you

9 say on this page, that in the statute, itself,

10 it says that, "The order shall remain in effect

11 until a decision is redetermined by a justice,

12 unless otherwise ordered by the court."

13 So a Judge Monday morning can

14 take a look at the Master's finding and say,

15 "This is arbitrary. I stay this order. Bring

16 the parties in, I want to see them next week."

17 CHAIRPERSON CATHERINE DUNHAM:

18 The judges have always had that right.

19 JUSTICE SAMUEL E. ZOLL: In

20 terms of time, I think you ought to leave the

21 time span within which the Judge hears the

22 appeal for administrative determination. I

23 think to put in the same day, we can't do it.

24 CHAIRPERSON CATHERINE DUNHAM:

1 Can we put our priority to those matters that
2 fall within or without the guidelines?
3 JUSTICE SAMUEL E. ZOLL: With
4 all due expedition, the court should hear
5 appeals from Masters' hearings and leave it to
6 the administrative structure.
7 MS. SUSAN SCHUR: Judge Zoll,
8 when we are talking about orders outside the
9 guidelines, there is no Master's order that's
10 standing as in the case ---
11 MR. MARC G. PERLIN: There is
12 always going to be one.
13 MS. SUSAN SCHUR: We had said
14 procedurally, and I am trying to keep this as
15 neat as possible, to get the Master's order, the
16 judge -- the orders within the guidelines, the
17 Judge reviews it, signs it, and says come back,
18 but he signs it. If the order is outside the
19 guidelines, the Judge is not going to sign it ---
20 MR. MARC G. PERLIN: It would
21 be the same thing.
22 MS. SUSAN SCHUR: So, again,
23 you left out a step in the right-hand column?
24 MR. MARC G. PERLIN: That's

1 right.

2 MR. WILLIAM O'MALLEY: I would

3 say just to the extent that the judge has the

4 ability to stay a Master's order, at least in

5 those few cases where that will happen, the time

6 hearing should be the same as on the other cases,

7 because if you don't. They could have nothing

8 in existence. In the majority of cases, where

9 there is an aggrieved party appealing, or the

10 Judge, on his own motion, wants a review but

11 doesn't feel that it is necessary to stay the

12 order in that are interim, whatever it is, then

13 you can leave it to the administrative

14 convenience of the court.

15 It will be a small number of

16 cases where the Judge on his or her own motion

17 wants a hearing and feels that the order of the

18 Master should be stated in the interim, and in

19 those few cases, it is most important that there

20 be that hearing right away.

21 JUSTICE SAMUEL E. ZOLL: I

22 understand the spirit, Mr. District Attorney,

23 with your proposal. The problem with it is the

24 Judge might not get the papers until 10 minutes

1 of four in the afternoon. After he gets off the
2 bench, they will give him the papers and he will
3 review them, and he will say, "It's quarter past
4 four, and I can't go along with this. Court is
5 closed."
6 CHAIRPERSON CATHERINE DUNHAM:
7 How about 24 hours?
8 SPEAKER FROM THE FLOOR: Can't
9 the Judge leave the order in effect for 24 hours?
10 The only time it's a problem is when the judge
11 stays operation of the Master's hearing. That's
12 the only case where it's a problem, and in those
13 few cases you cannot stay it until 9:00 the next
14 morning and have a hearing.
15 JUSTICE SAMUEL E. ZOLL: It
16 becomes a matter of notice to the parties. I
17 don't think -- without any administrative
18 experience, I think we ought to leave the
19 language as forceful as you would like to have
20 it, but general enough so that the directive of
21 the administrative justices is to have these
22 cases heard with expedition, but you can't do it
23 in one day, because he may not get the papers
24 until the following morning.

1 For example, in Dorchester,
2 the Judge who hears an abundance of these
3 non-support cases doesn't get off the bench
4 until, generally, 5:30, quarter of six every
5 night. He doesn't get the papers until he comes
6 in at 7:00 the following morning.
7 JUSTICE THEODORE A. GLYNN:
8 The language to the effect that if the Judge
9 does not hold a hearing within three days, that
10 the order of the Master shall become effective
11 within a three-day period.
12 MS. SUSAN SCHUR: That might
13 work against the timetables that we're talking
14 about. By the time we get the Complaint issued,
15 the service process to the parties, and the
16 parties in, we try to build in this same day
17 service, get people out of there and not to
18 delay it any further. Let me go back, because
19 Judge Zoll at one point was right.
20 JUSTICE SAMUEL E. ZOLL: I
21 did?
22 MS. SUSAN SCHUR: If an order
23 is outside the guidelines for good reason and
24 the Judge reviews it and feels he can sign it,

1 and that's straightforward and simple -- if the
2 order is outside the guidelines, the Judge will
3 sit in if he feels it is arbitrary or not. He
4 is not going to sign it and put it into effect,
5 pending an appeal or another hearing. It's in
6 that case where we need the basis to require the
7 same day hearing there first, where there is no
8 Master's order standing.
9 JUSTICE SAMUEL E. ZOLL: You
10 can't do it the same day. It's impossible to do
11 it the same day.
12 MS. SUSAN SCHUR: But the
13 Judge is not hearing all those cases. The
14 Master is hearing them.
15 JUSTICE SAMUEL E. ZOLL: He
16 won't get the papers until the end of the day.
17 CHAIRPERSON CATHERINE DUNHAM:
18 I think, in fact, we are spending an enormous
19 amount of time right now on an exception. I
20 think the spirit of this discussion is very
21 clear, whether it's the same day within 24 or 48
22 hours, when there is no order, that matter must
23 be brought back to the justice as soon as
24 possible, not to exceed three days, or something

1 of that sort.

2 JUSTICE SAMUEL E. ZOLL: One

3 other point that I think has to be built into

4 the statute and that relates to the time within

5 which the dissatisfied party has the right to

6 appeal. The implication here is that the person

7 has to make the decision on the spot. I think

8 the unsupported mother or the father should have

9 three days. They go home, they think about it,

10 they talk to their friend, who was in a similar

11 situation: "You know, I wasn't treated right."

12 But this doesn't happen until Thursday afternoon.

13 I think you ought to give them

14 three to five days, the parties. I just picked

15 those numbers out, within which to excercise

16 near right of appeal to a Master's decision.

17 MS. LEAH SPRAGUE: This comes

18 back to the distinction between orders within

19 the guidelines and outside the guidelines, and

20 for the reasons that Judge Zoll stated earlier,

21 I really don't think that is necessarily a valid

22 distinction. People can be aggrieved from both

23 sides, like the wife can say, "I happen to know

24 that he is making $25,000.00 a year."

1 And the Master says, "No, no.
2 I consider the husband's representation that he
3 is making $12,000.00 a year," and then apply the
4 guidelines on that. In that case, it doesn't
5 matter whether it's within the guidelines. The
6 issue is the wife really thinks the statement
7 should be made. On the other hand, the other
8 thing could happen, too. He could accept the
9 wife's representation, and that could be wrong.
10 So, the fact that it's within or outside of the
11 guidelines, I don't think it makes any
12 difference.
13 MR. JON LARAMORE: All it
14 effects is timing.
15 CHAIRPERSON CATHERINE DUNHAM:
16 May I ask the chair of the subcommittee to state
17 the closest thing he could manage to what he
18 thinks in light of all this feedback?
19 MR. JON LARAMORE: What we
20 are talking about is, we can either work from
21 the subcommittee proposal or Alternative 2.
22 There is one change in each one, as I understand
23 it, but let's work from the subcommittee
24 proposal. The only thing that's different, as I

1 understand it, and as I understand our
2 discussion, in our proposal about the
3 subcommittee, from our discussion about the
4 subcommittee proposal. Understanding that that
5 upward pointing line will be eliminated because
6 that's a drafting error, so just assume that
7 that's gone, is that the only difference now is
8 that there's a timing difference as to when
9 there is approval by the Judge having to do with
10 whether the order is inside or outside the guidelines,
11 that the Judge may decide not to sign an order,
12 but if so, he will still have some duty to bring
13 the parties back to court quickly. If he
14 doesn't bring them back, there has got to be
15 some sort of way to be sure that there is an
16 order in effect within a very short period of
17 time, if the Judge decides to bring the parties
18 back, either a time line imposed on him or the
19 Master's order goes into effect, if he doesn't
20 do something by a certain number of days,
21 something like that.
22 MS. LEAH SPRAGUE: I thought
23 we talked about putting a real strict time
24 period on it, if there is a stay.

1 MR. JON LARAMORE: There is a
2 question here that has to be resolved as a
3 drafting error, I think, between whether the
4 order will be in effect -- I think that Judge
5 Zoll said it will not be in effect until it is
6 signed by the judge. We can get to the same
7 place either way. We just have to work it out
8 as a drafting matter. So, I say with Casey's
9 change, incorporated into the subcommittee's
10 proposal, that's what we have reached the
11 consensus on.
12 CHAIRPERSON CATHERINE DUNHAM:
13 One point of clarification.
14 MR. MARC G. PERLIN: I would
15 support the illuminating difference between
16 having the guidelines and without the guidelines.
17 I don't think it really makes any difference.
18 As we stated few minutes ago, if there's going
19 to be an alteration, the parties have to be
20 brought in. If they are not, the order will go
21 into effect.
22 MS. MARILYIN RAY SMITH: From
23 whom ---
24 MR. HUGH F. GALLIGAN: From

1 the federal perspective and the expedited
2 process, prior to going to a Judge, you have got
3 to have at least a temporary order. If you
4 stay, then I assume you don't have one, so you
5 would probably have a problem with the federal
6 requirements.
7 MS. LEAH SPRAGUE: The
8 federal regulations state that you can have
9 ratification by a Judge, but the Master's order
10 has to go into effect immediately.
11 MR. HUGH F. GALLIGAN: What
12 comes out of the Master is at least a temporary
13 order.
14 MS. LEAH SPRAGUE:
15 Effectively?
16 MR. HUGH F. GALLIGAN:
17 Correct.
18 MS. MARILYN RAY SMITH: I
19 just want to clarify why he made this
20 distinction between the order within the
21 guidelines and without the guidelines, without
22 being exhibited one way or the other. The idea
23 was to give some support to the Masters and they
24 are findings within the guidelines, and there

1 would be a review that day, so you would
2 discourage frivolous appeals, whereas, if you
3 have an order without the guidelines because the
4 Master was exercising more discretion than just
5 guidelines, whether it be a mistake in finding
6 of income or because there's an exercise of
7 discretion or guidelines shouldn't apply to
8 this particular case, that the party should then
9 have the right to have an immediate hearing
10 without having to come back to court several
11 times.
12 Also, there's efforts to
13 buttress the validity of the Master's order. At
14 the same time, there is a right to a quick
15 hearing, people who have concerns about not
16 having been treated under these guidelines.
17 MR. WILLIAM CARITO: At the
18 risk of engaging in a narrative here, there were
19 three parties in this process. There is the
20 parties, essentially, the Master and the judge,
21 and here's what we are debating here is how much
22 of what happens in this process is going to be
23 dictated by each of those three players.
24 With all due respect to Judge

1 Zoll, I have a lot of concerns about moving
2 backwards in a direction of having a significant
3 portion of this process being determined by the
4 judges, because we are, in fact, moving to a
5 Master system, and I think that they have to be
6 given, basically, a lot of credence in this
7 process, and in addition to that, the parties
8 are given their full rights of appeal, to get a
9 hearing before the Judge.
10 I think that by providing for
11 judicial review that is provided for in what
12 Casey originally proposed, it is going to put a
13 good amount of both pressure on the judiciary to
14 do extensive reviews on these orders, Number 1,
15 which they may, in fact, not have the time to do;
16 and also, I think it does not eliminate what is
17 a concern of many people in this room, is that
18 there are judges out there who just don't handle
19 these cases well.
20 I think that if we go away
21 from the idea that a lot of the authority and
22 credibility of the system belongs to Masters, we
23 don't eliminate the judicial review, nor some
24 judicial discretion, as indicated, by adding

1 some modification what Barry was proposing and
2 what Casey feels will happen when a Judge
3 receives an order within the guidelines and
4 disagrees and says, "All right, I will sign the
5 order." And as Hugh says, the Judge would have
6 to sign the order, otherwise, we don't follow in
7 the federal guidelines. I would be really
8 reluctant to say that we should go back to
9 giving judges a wide range of discretion.
10 CHAIRPERSON CATHERINE DUNHAM:
11 I don't think -- I am going to take John's
12 representation of what is, in fact, coming out
13 of the Committee's recommendation, which didn't
14 look like a receipt to anything, with all due
15 respect. I guess I have got what is, in fact,
16 that there are certain prerogatives of the
17 judges, and what we have to figure out is in
18 those few cases where there is exceptions, where
19 we will run into a problem with the federal
20 guidelines that we won't have a temporary order
21 standing, we need to figure out what to do with
22 those few cases. I don't hear exceptions to the
23 recommendations, the subcommittee, in terms of
24 the process that's being proposed; is that

1 right?.

2 JUSTICE SAMUEL E. ZOLL:

3 Question. Is what you are saying true that if

4 the Master makes a decision, in order to comply

5 with the federal statute, that Master's order by

6 operation of law, if not signed by the Judge, is

7 automatically in effect? In order to comply, it

8 should be automatically in effect.

9 MR. HUGH F. GALLIGAN: What

10 has to come out of that process is a temporary

11 order at least, and that would be subject to

12 judicial review, alterations, whatever you want.

13 But what you are telling me is that it is going

14 to stay for a period of time?

15 JUSTICE SAMUEL E. ZOLL: What

16 I am suggesting is that the Judge ought not to

17 be required to sign an order with which he has

18 disagreement, so that if the temporary order

19 goes into effect, it goes in by operation of law.

20 MR. MARC G. PERLIN: Fine.

21 JUSTICE SAMUEL E. ZOLL: I

22 want to preserve the language in the statute as

23 proposed, which gives the Judge, which really

24 codifies his inherent authority, to stay any

1 order that is made that comes out of the court.
2 If the Judge wants to stay an order of any
3 proceeding, I think, inherently, he does.
4 MR. JON LARAMORE: I think
5 what we are saying, in addition to that, I don't
6 think that we will disagree with in that. In
7 addition do that, if there is a stay, we want to
8 require the Judge -- we want get an order in
9 place very quickly after that stay. There are a
10 number of ways to do it, but I think the most
11 expeditious is to require the judge to set any
12 order within a certain period of time.
13 JUSTICE SAMUEL E. ZOLL:
14 Please, don't specify the number, just urge ---
15 MR. JON LARAMORE: It seems to
16 me like what I'm hearing from other people is
17 that we want to set, for example, an outside
18 standard of three days.
19 JUSTICE SAMUEL E. ZOLL:
20 Can't do it.
21 CHAIRPERSON CATHERINE DUNHAM:
22 The appeals are suggesting three to five days.
23 CHIEF JUSTICE SAMUEL E. ZOLL:
24 That's just somebody going in and signing a

1 piece of paper and saying we want to appeal.
2 There's a difference between that and the --
3 first of all, if the Judge says that he wants to
4 hear further evidence, notices have to go out to
5 the parties. The parties have to be brought in
6 and there are certain discussions that have to
7 take place. In all others, it's at least seven
8 days, and in most cases 14 days.
9 MS. SUSAN SCHUR: I would
10 like to move the question as it pertains to the
11 process that we intend to close our process. I
12 am doing that, knowing there is going to have to
13 be redrafting, anyways, and the discussion about
14 how much time is involved with each step, we
15 will have to close ---
16 MR. MARC PERLIN: Can I just
17 get some clarification from you? There might be
18 a temporary order is what I heard, that will go
19 into effect even if the court doesn't sign it,
20 therefore, how can we allow the court to stay
21 the order? There is an inconsistency, unless I
22 am missing it, Judge Zoll.
23 JUSTICE SAMUEL E. ZOLL: I
24 think we have to preserve our inherent authority

1 as a matter of principal, whether it relates to
2 this.
3 MS. SUSAN SCHUR: Contest it
4 in federal court.
5 JUSTICE SAMUEL E. ZOLL: I
6 think that ought to be present in the statute,
7 and let's see what happens with it, let's see
8 what our experience is.
9 CHAIRPERSON CATHERINE DUNHAM:
10 The question has been called on the processes
11 recommended. Would you restate that?
12 MR. JOHN BLODGETT: I can't
13 vote on the process until I know what is going
14 to happen to the temporary order. The process,
15 to me, is almost irrelevant. If that temporary
16 order doesn't have full force ---
17 CHAIRPERSON CATHERINE DUNHAM:
18 The temporary order isn't real until it's signed
19 by the judge, in any event.
20 MR. JON LARAMORE: Judge Zoll
21 is suggesting that, in fact, the Master's
22 signature should be in effect by operation of
23 law prior to the signature by the judge.
24 JUSTICE SAMUEL E. ZOLL: But

1 the opportunity to review the case and stay it,
2 if the wants.
3 CHAIRPERSON CATHERINE DUNHAM:
4 If there is a temporary order, except where it
5 stays by the justice.
6 MR. JON LARAMORE: The sole
7 issue, I think, is whether the Judge should have
8 the authority to stay a temporary order.
9 MR. MARC G. PERLIN: He says
10 no.
11 MR. HUGH F. GALLIGAN: I am
12 saying you have to get a temporary order.
13 MS. RUTH-ARLENE HOWE: My
14 understanding is if the federal statute requires
15 a temporary order, and Judge Zoll is suggesting
16 that that temporary order, if the judge doesn't
17 sign it, becomes effective by the operation of
18 law, and that goes forward; however, if the
19 Judge, upon review, ultimately wants to stay
20 that order, he stays it but he can't stay it
21 until the time that he has arrived that the
22 order is going to go, and, therefore, if you
23 eliminate that -- I am suggesting that's the way
24 it may have to work.

1 JUSTICE SAMUEL E. ZOLL: My
2 lawyer tells me that's not correct.
3 MR. BARRY WALKER: The order
4 would be stayed and then there would be a date
5 set for a hearing by the court on a new order,
6 so the order would be stayed during the period
7 of time between the date of its stay and the
8 date of the new decision.
9 Let me finish. Let's deal
10 with some practical considerations. Let's
11 assume a Master makes an order. The Master is
12 going to make an order and say, "On Day 1 of
13 this order, forthwith, I order the husband to
14 pay the wife $100.00. The next payment will be
15 made one week from this day." All right.
16 Shouldn't that one week parameter be the time
17 during which either the parties appeal, or if
18 the court wishes to stay the order, a new
19 hearing must be held so that nobody suffers
20 damage, if you're limited to a one-week period
21 of time.
22 MS. SUSAN SCHUR: No, because
23 then you have another week after that.
24 MR. BARRY WALKER: No. The

1 order will be made forthwith, that's the day of
2 the order, and no time is lost.
3 MR. GEORGE KELLY: I
4 sympathize with the views over here. I think
5 that a lot of premises are operating here, and I
6 am not a lawyer. I wouldn't preach
7 Constitutional law to you, but there is going to
8 be a lot of challenges in both state and federal
9 courts to what's going on federally. Just like
10 when the state comes down to our township in
11 West Springfield and tells us we've got to do
12 this. A lot of times we go back and say, "Okay,
13 we've got to walk that wall, but how do we do
14 it?"
15 I think the basics of
16 Constitutional law cannot be taken away by
17 federal regulations, and some of the things that
18 Judge Zoll was talking about are the basis of
19 Constitutional law. If the Judge is going to
20 sign his name and say I am going to stay this,
21 he is going to be pretty damn sure that he is on
22 solid footing, and I don't see any District
23 Court Judge or any Probate Judge sticking his
24 neck out that far to sign his name and say, "I

1 stay this order because of this," and it be a
2 very flimsy excuse, so, you know, maybe we are
3 just debating something that really doesn't need
4 to be debated. I think what we need to look at
5 in this process, if it's fair and if meets the
6 Constitutional standards that we appreciate this
7 country, it defeats many criterias of fairness
8 as to how it effects the parties, both parties,
9 the party seeking support and the party giving
10 the support.
11 MR. MARC G. PERLIN: That is
12 correct. If I can just address this question to
13 you. Will the existence of a temporary order
14 entered by a Master and then immediately stayed
15 by a court satisfy the federal statute and
16 regulation, as far as you know?
17 MR. HUGH GALLIGAN: I think
18 it's debatable.
19 MR. MARC PERLIN: That's a
20 good answer.
21 JUSTICE THEODORE A. GLYNN:
22 What's the other side of the coin? What happens
23 if it isn't complied with?
24 MR. HUGH GALLIGAN: What Judge

1 Zoll is saying is there's an inherent right. I
2 am not going to argue with that.
3 JUSTICE THEODORE A. GLYNN:
4 Would all federal funds stop?
5 MR. HUGH F. GALLIGAN: I
6 seriously doubt that.
7 MR. WILLIAM RYAN: Because you
8 wouldn't bring it to their attention.
9 JOE: GALLANT: I have more
10 problems with the judge's principle than
11 anything else. The problem I have is to allow
12 this order, is to how long can a order be stayed,
13 what is the time frame? That, to me, is the
14 bottom line.
15 MR. BARRY WALKER: One week.
16 CHAIRPERSON CATHERINE DUNHAM:
17 Okay. Let's move from that particular question.
18 I think we are not too far in terms of the
19 recommendations that Jon has made, the process
20 all the way to you to and including the judge's
21 right to stay, would be that process with the
22 added language, with whatever is going to happen
23 would happen within a week.
24 JUSTICE SAMUEL E. ZOLL:

1 Calendar week.

2 CHAIRPERSON CATHERINE M. DUNHAM:

3 Calendar week. Thank you. All those in favor.

4 (14 in favor)

5 CHAIRPERSON CATHERINE DUNHAM:

6 All those opposed. None opposed.

7 MS. CONNIE WILLIAMS: I would

8 like you to put in writing, for me, what we just

9 voted on.

10 JUSTICE SAMUEL E. ZOLL: Are

11 we going to get into that before lunch? Could

12 we get into the selection of Masters, and by

13 whom they are going to be employed, the

14 recommendations of the subcommittee?

15 CHAIRPERSON CATHERINE DUNHAM:

16 We're shooting for 1:00 lunch, because the stuff

17 is sitting out there ---

18 MR. JON LARAMORE: I will

19 tell you what is in our proposal. Let's -- I

20 know that there are some other thoughts on this --

21 there is something that was arrived, this was

22 not an aggrieved issue which the subcommittee

23 spent a lot of time on. We did make three

24 offers. It doesn't reflect as much labor as the

1 other things we did. We are proposing a
2 committee which will create a list of child
3 support Masters, presumably from applicants,
4 those applicants have to be members of the Bar
5 and they have to participate in a training
6 program, and the committee will perscribe other
7 qualifications. What we are saying is that the
8 committee will do -- this qualifying will
9 consist of three chief administrative justices.
10 We are talking about the three different
11 departments, someone designated by the Mass Bar
12 Association; someone designated by the 4D agency,
13 by the four legal agencies, someone from the
14 DA's agency, two designees of the Governor, one
15 of them to be a custodial parent and one non-custodial
16 parent, and there would be the Master with one
17 year term, and the review and reappointment will
18 be done by the committmee. The actual
19 assignment to be done by various court will be
20 done by the chief administrative justice of the
21 department. That's our proposal on how they
22 could get picked. There is nothing about salary.
23 There is nothing specific about training. It
24 doesn't specify what the training is to be.

1 JUSTICE SAMUEL E. ZOLL: I
2 have a couple of quick amendments before the
3 food spoils. Number 1, I think we out to spell
4 out in the statute that the Master will be
5 employees of the judicial branch so that they
6 will be accountable to the judiciary. Number 2,
7 I think there ought to be some language in there
8 that the salaries should be set by the board as
9 opposed to the committee, the committee as
10 opposed to the legislature itself. All because
11 of its implications to the employees in the
12 court system. These people if you are going to
13 the legislature directly and not going through
14 the court process, there are problems ---
15 MS. SUSAN SCHUR: How about
16 recommended by the committee to the Chief
17 Administrative Justice?
18 JUSTICE SAMUEL E. ZOLL: Yes.
19 The third thing, this may incur the displeasure
20 of my friend Barry. I am not totally persuaded
21 that all of the Masters should be exclusively
22 lawyers. I think there are many people who are
23 none lawyers, who were trained, and capable in
24 the field of being a Master. So I don't think

1 that the committee out to restrict itself in the
2 selection process just to lawyers.
3 MR. GEORGE KELLY: I was
4 privy to most of the discussions on this. As a
5 chairperson who sat on the legislative committee,
6 some of the problems that I proceive with this
7 is that Masters, to the general untrained public,
8 are going to be almost unidentifiable from
9 judges. They are going to be assistant judges.
10 I want to go slow on that. I do join Judge Zoll
11 that they don't have to be lawyers, but they
12 have to be at least somebody who could deal with
13 the complicated issues. The American
14 Arbitration Association has identified some
15 people who sit as arbitrators, who are not
16 lawyers. Also I have some problems on the
17 committee selection process, and I think that
18 perhaps, you know, all the judges need to be
19 represented, but I would like to see more input
20 from custody and non-custody parents, whether
21 the judiciary will select a couple of those, I
22 think it's important that the Governor select a
23 couple. I would like to see a consumer oriented
24 selection process. I think that maybe Jon

1 didn't elaborate enough on the thing, whoever
2 sits on this committee would map out a list of
3 qualified persons that have applied for these
4 positions. Then that list would be submitted to
5 the judges. There maybe two hundred people on
6 that list. The judges may decide to pick ten on
7 that list, that certainly would have been their
8 prerogative. They don't necessarily have to
9 select everybody who is on that list. I kind of
10 propose more consumer input into this system.
11 MR. WILLIAM O'MALLEY: That's
12 a new idea. Whether the Masters need to be
13 lawyers or may have been lawyers, I would
14 suggest that it is very important that it be
15 full-time position. That no direct or indirect
16 practicing. Otherwise you just create the
17 appearance of conflict of interest.
18 JUSTICE SAMUEL E. ZOLL: Right.
19 MR. JON LARAMORE: I want to
20 address the issue of lawyers, something to the
21 contrast that we have to talk about. I feel
22 very strongly about that. We need to stick with
23 legal qualifications in these Masters, and there
24 is a specific reason why. We have been thinking

1 of conceiving of these matters, but we couldn't
2 support enforcers. There are some, I think,
3 really quite complex techniques. Support
4 enforcement that were available in the
5 Commonwealth having to do with property, that
6 are not used of as much as they should be. I
7 think they would be used more as support becomes
8 more and more important issue. I think I know
9 it's unreasonable to expect people who don't
10 have legal training in what they are doing is
11 setting a system that can act the way we want it
12 to. And that was our reasoning behind lawyers.
13 I feel very strongly that we need to stick with
14 that area. I would like to support Jon because
15 even though it might be a nice idea to have non
16 lawyers hearing cases as Masters, there is a
17 vast quality of case law that will also still
18 apply to the setting of support order to non
19 legal personnell that might have no knowledge of
20 their might ability to analyze financial
21 statements, but there are other considerations
22 that a Master must take into account when they
23 are making decisions.
24 MR. BARRY WALKER: I agree

1 with Shakespare, but when chief justices of the
2 supreme court, that's when I think the assistant
3 justice should be non lawyers.
4 JUSTICE SAMUEL E. ZOLL: The
5 constitution permits it.
6 MR. WILLIAM CARITO: In
7 looking at Masters in the appointment process,
8 it's important to think of public confidence. I
9 Think in fact we have discussed firmer
10 qualifications, like a five-year practice,
11 having membership in the Bar and so forth. I
12 guess in some ways the issue of salary is also
13 important. Given that we want to make sure that
14 the public proceives that the salaries are high
15 enough to attract capable people to these
16 positions, and I am not sure whether it makes
17 sense to look within the judicial pay scale at
18 specifying a salary level rather than leaving it
19 up to the committee to look at and then follow
20 up on what George said. We have some concerns,
21 not much, about the composition of the meaning,
22 like how long shall committee members serve and
23 also the designation process, generally these
24 kind of things rest with the Governor, or some

1 other legislative body within the government.
2 You can see a situation where somebody is
3 appointed from a Mass Bar by reason of the Bar
4 and sitting there 20 years.
5 CHAIRPERSON CATHERINE DUNHAM:
6 Frank.
7 MR. FRANK ANDERSON: I would
8 like to go along with Judge Zoll over non
9 lawyers. Look at your arbitrators who are doing
10 serious labor disputes and financial matters.
11 They are doing an effective job. The non-
12 custodial and custodial parents that are called
13 for, I would like to see that they are non
14 lawyers so they can properly (inaudible) to lay
15 people ---
16 CHAIRPERSON CATHERINE DUNHAM:
17 Let me suggest something. It might not work too.
18 But the definition of the qualifications be
19 funcitionally defined, but defined in terms of
20 technical expertise that almost guarantees that
21 someone had to be a certified lawyer or an
22 arbitrator. One of the defensive reasons that
23 we were going for credentials was to make sure
24 that weren't subject to any kind of compromise

1 on the quality of the qualifications because of
2 other forces within the system which is always a
3 fear in this wonderful Commonwealth of ours.
4 MR. FRANK ANDERSON: Can I
5 make that in the form of a motion that non
6 custodial and custodial parents will be ---
7 CHAIRPERSON CATHERINE DUNHAM:
8 Let me separate that. Lawyers versus non
9 lawyers is one vote re credential versus
10 functional expertise is one vote. Custodial/
11 non-custodial to non lawyers is the other issue,
12 and he third suggestion is that they simply be
13 an added consumer representation appointed by
14 the Governor.
15 JUSTICE SAMUEL E. ZOLL:
16 Employees of the judiciary perhaps.
17 MR. JON LARAMORE: I think we
18 can take Frank's proposal by consensus.
19 CHAIRPERSON CATHERINE DUNHAM:
20 Okay. Suggestion
21 MS. SUSAN SCHUR: A couple of
22 things. I don't think there is any dispute on
23 those issues.
24 CHAIRPERSON CATHERINE DUNHAM:

1 I think there is a dispute.

2 MR. MARC G. PERLIN: You want

3 to preclude the possibility ---

4 MS. MARILYIN RAY SMITH: I

5 think they need to be lawyers.

6 CHAIRPERSON CATHERINE DUNHAM:

7 Strictly articulated functional description of

8 expertise versus the credential of a lawyer.

9 Can I hear all those in favor of it being a

10 lawyer.

11 (11 voting in favor of lawyers.)

12 CHAIRPERSON CATHERINE DUNHAM:

13 Against lawyers?

14 (9 Votes against lawyers.)

15 JUSTICE SAMUEL E. ZOLL: Just

16 for the record, could you clarify whether this

17 vote is for an open process for those who would

18 be Masters? I would prefer that it be covered

19 for or against lawyers.

20 CHAIRPERSON CATHERINE DUNHAM:

21 Do we have a count for, not limited to lawyers.

22 It's nine not limited, not limited. 11 for

23 limited.

24 CHAIRPERSON CATHERINE DUNHAM:

1 Lawyers win again.

2 MS. CONNIE WILLIAMS: 11 voted

3 for the limitation of a lawyer.

4 CHAIRPERSON CATHERINE DUNHAM:

5 Yes, we are moving on.

6 MS. SUSAN SCHUR: One is on

7 salary. I suspect you are going to have some

8 problems. I don't have the answer. Some of us

9 in the legislature are trying very hard to work

10 on, which is (inaudible) or the court magistrate.

11 Secondly, there a language here which says the

12 chief justices assigns ---

13 MR. JON LARAMORE: It's the

14 last sentence of the long paragraph on Page 2.

15 MS. SUSAN SCHUR: The other

16 question was, and I think this maybe a matter of

17 interpretation, the committee constitutes a list

18 who shall participate in the training and be

19 assigned. I do not interpret this to mean you

20 present three hundred qualified people to Judge,

21 and they select from that list their favored 20.

22 MR. JON LARAMORE: It's not

23 specified as clearly as it should be. It was my

24 understanding that the list would be very close

1 to the number of Masters that would be appointed.
2 I think.
3 MS. SUSAN SCHUR: I raise it
4 because I would suggest if you re going to go
5 through all the trouble of having this committee
6 serve as Master, you should ---
7 MR. JON LARAMORE: We want to
8 build a little flexibility, and because there is
9 no specifics as to how many Masters we took,
10 that bid on, in other words, we have no way of
11 doing that.
12 MS. SUSAN SCHUR: I don't
13 know how. I would suggest the language, but it
14 should be for a request of specific numbers of
15 Masters. The committee shall present the names
16 of those, names of those who will serve.
17 JUSTICE SAMUEL E. ZOLL: No,
18 no. You are not going to send me anybody from
19 Boston. I would like to have the chance to look
20 at two or three people. The Governor has that
21 in the appointment of judges.
22 MR. MARC PERLIN: We do need
23 a little bit of redrafting. The paragraph in
24 the middle says the Master shall serve for terms

1 of one year. No one is going to serve for one
2 year unless that person is going to be appointed.
3 So we have to move that language in the bottom
4 after being designated.
5 CHAIRPERSON CATHERINE DUNHAM:
6 These issues, if I can again be arbitrary, these
7 are implementations. I want to get the spirit
8 of the sensitive group around. Salaries should
9 be consistent and feasible within the judicial
10 system obviously. Secondly, the process, as
11 articulated by the subcommittee, is to identify
12 qualified candidates and then give the presiding
13 justices a choice, but not a range of thousands.
14 That's just the specific drafting details. I
15 think I want to defer, if I can ---
16 JUSTICE SAMUEL E. ZOLL:
17 George.
18 MR. GEORGE KELLY: I was the
19 one who voted on the range. I think what we
20 discussed was mainly this committee would be a
21 nominating committee, and the committee of the
22 judges would be appointing authority. I think
23 it would be grossly unfair if we nominated the
24 exact numbers of people. I think it would be

1 grossly unfair if we nominated, if they needed
2 20, maybe there is some room for compromise.
3 CHAIRPERSON CATHERINE DUNHAM:
4 Are we going to eat?
5 CHAIRPERSON CATHERINE DUNHAM:
6 Yes.
7 MR. WILLIAM RYAN: I just
8 want to raise the issue that was raised by Susan
9 as far as salary. What we were talking about is
10 a compromise that the salary of the Master be
11 set at a level within the chief administrative
12 compensation system to avoid any political
13 fighting for salaries.
14 CHAIRPERSON CATHERINE DUNHAM:
15 Let me also remind you, as we bring this to
16 closure -- Pat.
17 MR. PATRICK RILEY: Now, we
18 have the Master in effect appointed. The
19 justice from those selected and nominated by the
20 committee made removable by the committee.
21 MS. RUTH-ARLENE HOWE: I would
22 like to state another problem that's the issue
23 of your recommending a committee being
24 constitued, but you say nothing about the

1 duration of the terms of this meeting.

2 CHAIRPERSON CATHERINE DUNHAM:

3 Clarifying on those two points, I don't believe

4 the intent of the committee is to move back into

5 the system and remove the person. I think it

6 was not feasible anyway.

7 MS. SUSAN SCHUR: Removable

8 for cause by the committee.

9 CHAIRPERSON CATHERINE DUNHAM:

10 What I want to remind the group of, as I bring

11 this to closure, is that the implementations

12 issue as oppossed to the policy direction that

13 is intentional consistent. Is a recommendation

14 to the Governor and the legistalture strongly, I

15 must remind you that this is -- we workout some

16 very important implementations in terms of cost,

17 location, and other pragmatic points that we

18 need to continue to address because in fact we

19 have made a major step. I think the next major

20 step is the constitution of the nominating

21 committee and then the recommendations and the

22 rest of the staff will come back to be reviewed.

23 MS. SUSAN SCHUR: I would

24 differ with you to the extent that this is

1 really -- The legislative process is moving.
2 Maybe it will become really real after lunch,
3 but there is not a ---
4 CHAIRPERSON CATHERINE DUNHAM:
5 I am differentiating between the statutory
6 recommendations, and I am not backing away from
7 the fact that the more specific we are, the
8 better off the legislation will be, and I think
9 we have been quite specific on those two issues.
10 MR. BARRY WALKER: We do have
11 consensus. So the issue of Master, the details
12 which are going to be drafted with respect to
13 our general discussion; is that what you're
14 saying? Can I move the question, and can we eat?
15 CHAIRPERSON CATHERINE DUNHAM:
16 All those in favor of eating?
17 (Luncheon recess.)
18
19 AFTERNOON SESSION
20
21 CHAIRPERSON CATHERINE DUNHAM:
22 We have two very important issues that have to
23 be dealt with, and I would like to ask -- we
24 originally shot for a 2:30 ending. It is now

1:20. I doubt that we will hit 2:30, but I would like to clear up the following: that we offer 45 minutes for each of the following discussions, the 4D agency function and the guidelines process.

I can explain very quickly and shoot for 3:00 ending, that will require us to be very rigorous about limiting discussion and debate on the two items on the agenda, and I will ask assistance in doing that.

MR. GEORGE KELLY: Perhaps some people will be leaving before we conclude. Would it be maybe a good many idea to get over our house committee problem of when we will meet again?

CHAIRPERSON CATHERINE DUNHAM: The Commission is going to continue to meet, but not necessarily -- as I said when we started, it's going to meet to consider implementation of the policy recommendations of today. Out of today's meeting, we will draft recommendations to the Governor, and that draft will be very quickly reviewed by Commission members, almost concurrent with its arrival at the Governor's

1 desk for the October 1st deadline, so I am not
2 assuming that we are going to have another
3 meeting to consider either guidelines or 4D
4 functions -- we are called upon by federal law
5 to make recommendations about.
6 I do expect that we will be
7 meeting in about three weeks to look at the next
8 steps in terms of representation.
9 MR. GEORGE KELLY: Our
10 subcommittee has made recommendations that are
11 not on today's agenda, that some of them will
12 require legislation that will go hand in hand
13 with the legislation.
14 CHAIRPERSON CATHERINE DUNHAM:
15 The number of the subcommittee recommendations
16 being included as part of the subcommittee as we
17 form the Legislative Committee have arched in
18 terms of the overlapse -- that's one of the
19 reasons this morning I had noted in the
20 subcommittee recommendations, the last meeting
21 of George's subcommittee talked a lot about
22 custody and visitation, which is really not the
23 purview of what the Commission is recommending
24 to the Governor, but it is important. We can

1 decide what to do with those recommendations at
2 the next Commission meeting, but it will not be
3 as part of the recommendations of the statutory
4 requirements of the special law.
5 That's why I have services
6 enforcement as an added separate experiment
7 under the 4D agency discussion.
8 MR. GEORGE KELLY: There is
9 one piece that would almost tail in with
10 requirements of the federal law, and that is
11 specific penalties against discrimination of
12 people who are subject to wage withholding. We
13 really think that means if an employee is
14 discriminated against by an employer or
15 prospective employer because he has a wage
16 withholding order, we think that needs to be
17 discussed, because without that it would be a
18 very ---
19 MR. HUGH F. GALLIGAN: That's
20 in our draft.
21 MR. GEORGE KELLY: I think we
22 want to get on to the point that you went beyond
23 and perhaps you would want to consider
24 strengthening your draft.

1 MR. JON LARAMORE: Maybe we
2 should talk about this now.
3 CHAIRPERSON CATHERINE DUNHAM:
4 I think what I would like to do is -- what I
5 would like to do is see, and I don't think that
6 there is any dispute, and also the federal law
7 calls for it, very strong sanctions against any
8 employer that discourages this process around
9 wage withholding, so if the subcommittee
10 recommends it, it should be considered by Jon
11 and compare it to the draft that's been
12 presented to this Committee, I don't think it's
13 inconsistent. MR. GEORGE
14 KELLY: A little stronger, that's all.
15 CHAIRPERSON CATHERINE DUNHAM:
16 With the exception of that piece, the house has,
17 45-45 minute scenarios or less. We always take
18 less. Given that 3:00 is our outside point of
19 departure ---
20 JUSTICE SAMUEL E. ZOLL: I am
21 under the impression that we have an agreement
22 on the guidelines issue. Would it be
23 inappropriate to suggest that we take that up
24 first and get that out of the way?

1 I am told by Professor Perlin
2 that after having talked with Chief Justice
3 Glynn and Professor Perlin this morning, it
4 seems like the concerns that the judiciary had
5 were ironed out; is that an overstatement,
6 Professor Perlin?
7 MR. MARC G. PERLIN: I think ---
8 CHAIRPERSON CATHERINE DUNHAM:
9 Judge Zoll, I can't jump yet because I haven't
10 gotten an agreement that we are ready to go on
11 into the next 45-minute segment.
12 CHAIRPERSON CATHERINE DUNHAM:
13 Susan, unresolved issues on the Master system?
14 MS. SUSAN SCHUR: The
15 question that I started to raise was there is
16 built into the proposed statute an annual review
17 by the Committee of the performance of the
18 Master and the appointment eligibility
19 determination becomes unclear to me now, whether
20 the administrative justices reappoint only on
21 the recommendation for reappointment of the Committee
22 or on their own authority. I think we ought to
23 clarify that, given that we've them, the
24 justices, appointing authority, so either the

1 language or at least the consensus that we
2 really are talking about this committee ---
3 UNIDENTIFIED SPEAKER: I
4 certainly think we ought to clarify it. Our
5 intention was that the committee should say that
6 person is qualified to be on the list for
7 another year and if the individual
8 administrative justice wants to reappoint that
9 person, that's within the purview of the
10 administrative justice, the District Court and
11 the Probate Court. That was the intention of
12 our subcommittee. If the language doesn't say
13 it and if this Commission agrees, we ought to
14 make it say it.
15 CHAIRPERSON CATHERINE DUNHAM:
16 All it says is shall serve for a term of one
17 year and shall be eligible for reappointment.
18 MR. JON LARAMORE: Marc Is
19 right. If there is no objection to that, I
20 think that's what the language should say.
21 MR. GEORGE KELLY: Just a
22 comment, and I just think that there is no
23 problem when the Committee and the judges are in
24 agreement. I think the problem would come if

1 the Committee thought, based on performance-based
2 criteria, that said Master did not meet the
3 standards and the judges thought he did or
4 vice-versa, that the Committee thought that this
5 said Master X met the standards, but the judges
6 thought they didn't. I think that's where the
7 real crunch comes in.
8 MR. MARC G. PERLIN: If the
9 Committee thinks someone did not meet the
10 standards, that person is no longer on the list
11 could not be appointed by the individual courts.
12 If the Committee thinks someone does meet the
13 standards, there is still discretion not to
14 appoint that person. I think that policy is
15 clear.
16 MR. GEORGE KELLY: Let me
17 just be concerned about the way we did it and
18 not the real purpose for doing it.
19 CHAIRPERSON CATHERINE DUNHAM:
20 Is there any problem with that? We will move to
21 our further consensus gathering. It is my
22 impression that the guidelines have undergone
23 part of the discussion as the 4D agency issue.
24 I think I would rather stick to our agenda and

1 move through a discussion of the 4D function
2 unless there is additional overwhelming evidence
3 that he people want to resolve the guidelines
4 issue first.
5 I would like to just briefly
6 introduce the 4D agency functions section of
7 this. The reason I put this on the agenda as it
8 stands is that we have intentionally -- I have
9 intentionally deferred the discussion of the 4D
10 agency until after more substantive policy
11 directions were established by the Commission.
12 Admittedly, this is late in the game, and it's a
13 very important issue, but the 4D agency is
14 designated to support and ensure that the
15 functions, as mandated by the federal law and
16 the Commission are carried out, so I don't want
17 to talk about the cart before the horse, and I
18 think we have the outline of the horse as well
19 defined, with the exception of the guidelines.
20 The 4D agency designation or
21 non-designation is an issue but also is
22 secondary in my mind to the functions, the power
23 and the responsibility of the 4D agency. The
24 designation of one agency over another at this

1 point in time is encouraged by the federal law,
2 but at this point, I think we can stall just a
3 little longer while we clarify the functions and
4 the power of that agency so that we are sure
5 that the designation proceeds appropriately. The
6 current status of the 4D agency is that the
7 Governor has designated the Welfare Department
8 as our 4D agency.
9 It has been our intention all
10 along not to have that as a precedent that had
11 to be followed but, in fact, we wanted to look
12 objectively at the functions and then the
13 appropriateness of whatever agency this
14 Commission, through it's functional
15 recommendations, should arrive at. It's a long
16 way, without saying, that I still have not
17 decided, and I hope that the Commission is not
18 decided because we had not been presented with
19 sufficient objective information about the
20 capacity of any one apart of the child support
21 system in order to make a real judgment about
22 who at this point in time can best support the
23 recommendations that the Commission is making
24 with respect to wage withholding, the Master

1 system, and other important parts of this
2 Commission's findings.
3 We have looked internally, and
4 in fact, the Welfare Department, in conjunction
5 with the regional office has made a consultant
6 study to look -- I think a lot of you have been
7 interviewed by the people -- look at the current
8 functioning of our 4D agency and make
9 recommendations back. Those recommendations are
10 not back yet, and I would like them to be part
11 of the consideration of this Commission because
12 I think it's important for us to go into that
13 detail. In the meantime, I want to start the
14 discussion of the 4D agency by having the
15 current 4D agency -- Chuck had to go to a media
16 thing, he couldn't avoid those. That's why I
17 was hoping to get this in before lunch, but he
18 has asked Bill Carito to represent the Welfare
19 Department and what their views of the world is
20 at this point with respect to this discussion
21 and then launch the discussion again by function
22 services enforcement collections, after that
23 particular general discussion has been launched
24 by him.

1 MR. WILLIAM CURITO:

2 Currently in the child support system we have a
3 pretty fragmented process. The responsibility
4 lies both in the Probation Department, and some
5 responsibility lies with the Department of
6 Public Welfare. Some responsibility lies with
7 the DA's, and there may be other players that
8 are missing, but it's a fragmented system, and
9 we think that under the federal guidelines that
10 it does not meet with what we think a 4D agency
11 should look like. We have wrestled with this
12 problem very hard about the changes that were
13 made, and to go back to the conversation that
14 transpired this morning when Barry said we are
15 not yet into re-inventing the wheel. Well, in
16 many cases we aren't, but I think in this
17 particular case we are, in fact, here to
18 re-invent the wheel, to put in place of a 4D
19 system that is responsible and has authority and
20 accountability to provide the services and to
21 make sure that enforcement happens at a time and
22 proper fashion when collections happen in the
23 proper fashion.
24 We represent a significant

1 piece of the population that uses the system,
2 and we also represent the Commonwealth and the
3 taxpayers by bringing these actions in AFDC
4 cases. That will not change, whether we are 4D
5 or not. We have a 4A responsibility, and we
6 have that responsibility to bring the cases. So
7 we are a party to the 4D system, whether we are
8 4D or not. As we discuss 4D, we have said to
9 ourselves, "Well, let's take 4D and separate it
10 from what we currently do and talk about what is
11 in terms of the clients that we represent in
12 this system, what the best 4D system that we
13 could come up with would look like. We have a
14 model to give out to everybody shortly.
15 However, in the discussions
16 that we have had with Commission members and in
17 discussions that have gone on, and also
18 discussions that we have had within the
19 Department, it's become clear to us that the
20 goal of the strong 4D agency is far less
21 reachable if it is being discussed in the
22 context of the Department of Public Welfare, as
23 in a 4D agency. There is a lot of institutional
24 history that's gone by in this whole area of

1 child support. In addition to that, a
2 Commissioner has made a determination that,
3 based not only on that consideration but also on
4 looking at what is being done in other states,
5 and then finally looking at the responsibilities
6 that we, as the Welfare Department, have carried
7 out, vis-a-vis AFDC, Medicaid, employment,
8 training, and other programs that we run, that
9 in fact it makes more sense for this Commission
10 to be looking at 4D alternatives that are other
11 than the Welfare Department and, in fact, that
12 we should not be under consideration as a 4D
13 agency.
14 There is the Commissioner's
15 viewpoint. He would have expressed it himself,
16 if we had gotten to this, this morning. We
17 think it is most important that this Commission
18 focus on the functions of the 4D, that this
19 Commission would reach some consensus that the
20 4D agency should be a strong 4D agency, and in
21 light of these discussions that I have had and
22 with many of you, it is just crystal clear to me
23 that as long as the Welfare Department is
24 considered a player in the 4D discussions, that

1 we will not reach consensus on a strong 4D, and
2 it is more important to us and the taxpayers
3 that we represent from the 4A side, that we have
4 a strong 4D than need the 4D, because this is
5 something that this is what it is all about as
6 far as we are concerned.
7 So having said all that, I
8 think we have two ways to go in the Commission.
9 One is to discuss the functions of the strong 4D,
10 and I am agreeing with Cathy that we don't have
11 enough information as yet in terms of making any
12 one recommendation, however, there have been
13 some alternatives proposed previously and there
14 are some other ways that other states do this
15 function, that this Commission should go on
16 record as saying to the Governor that these
17 alternatives should be fully explored in terms
18 of a permanent 4D designation, and I think that
19 is the kind of a shape that we would like to see
20 the discussion take place today.
21 CHAIRPERSON CATHERINE DUNHAM:
22 Just for the uninformed, could you articulate
23 some of the other alternatives that you have in
24 mind?

1 MR. WILLIAM CURITO: The
2 Commissioner just got back from Texas, so this
3 one is hot on his mind. In Texas the 4D
4 function is performed by the attorney general.
5 And I think that when you look at the three
6 functions that 4D is supposed to perform, given
7 Cathy's outline, we have various players in the
8 states that have various strenghts in these
9 areas. Let's assume for the moment that the
10 collections function, if we can all reach some
11 agreement, and I hope that we will, the
12 collection functions should be centralized given
13 the many decisions we have already made today,
14 vis-a-vis wage assignment and the like. That
15 can be handled by anybody, any player in the
16 system, by way of a contract with a private
17 sector, entity, financial institution or
18 otherwise that is set up to handle those
19 collections in an expeditious fashion.
20 I can think of some other good
21 reasons why that should be handled that way. In
22 terms of enforcement, there are institutional
23 players, be they the attorney general or the DA,
24 who certainly have a leg up on the department,

1 in terms of the many enforcement issues and
2 dealing with the enforcement community.
3 And the third one is services.
4 Well, in our view of the strong 4D agency,
5 services in the first instance are going to be
6 delivered through the courts. All parties, be
7 they AFDC or not AFDC, are going to be walking
8 into the court and will be coming into the court
9 to get an order entered before a Master, and
10 that it's incument that when they walk into that
11 court there is somebody there who sits down with
12 him and says, "All right, you are in here for a
13 temporary support order and these are the steps
14 that have to take place, this is what you have
15 to have," and then they prepare whatever is
16 necessary to get that up to a Master and
17 schedules and so forth, and it seems that for a
18 variety of reasons that is not necessary,
19 something that is inherently the Welfare
20 Department's ability. So this is some of the
21 things, and in terms of the alternatives of the
22 attorney general, one, he has certainly the
23 relationship of divorce in the community, he has
24 the ability to contract out the collections, and

1 I think he certainly has the ability to work
2 with the court system to set up a service
3 delivery model in the courts.
4 Another alternative that was
5 proposed earlier was the district attorneys.
6 What are the strengths there? Well, it's
7 certainly in the enforcement area. They are
8 following the court. But because of the fact
9 that they are in courts, they have already begun
10 to develop some experience in delivering
11 services, as well as they can set up the service
12 model, I think, in courts effectively. And the
13 collections piece, again, on a contract, which
14 is a centralized financial agent.
15 The problem that the DA's have
16 is they are fragmented and uncentralized. There
17 is no centralized clearing house in which the
18 DA's -- I came to find out in my discussions
19 with people that the fact that the DA's have
20 legislation pending, which would, in fact, set
21 up a centralized mechanism under which the
22 administration, for example, of the contract
23 with the financial entity could be managed by
24 someone appointed by the DA's with some staff,

1 and so this, I think, becomes a much more
2 reasonable alternative.
3 The child support function is
4 also inherently a revenue function. There has
5 been some discussions and that, perhaps, we
6 should be looking at the Department of Revenue
7 in handling the administration of this, although
8 I think that from some prospective that might
9 not. As with the courts, themselves, maybe if
10 they would be interested or could get this model
11 and grab it, might be the appropriate place for
12 this function to lie. I think a part of the
13 problems that, in talking to the Commission
14 members about this issue, that they have had in
15 focusing -- everybody has had a problem with
16 welfare, but whether there were really any other
17 alternatives, has been that the Commission
18 members haven't had a real strong sense or
19 ground of what we mean by a strong 4D and what
20 4D's responsibility should be and how that
21 should be managed.
22 I think that's what we would
23 like to do is present this so that the
24 Commission members would have some understanding

1 of that, and also that they can see that it does
2 not necessarily -- is not necessarily a function
3 that's inherent to the Department of Public
4 Welfare, and perhaps justifiably could be -- I
5 suppose another alternative would be the
6 establishment of a new agency. I am not sure
7 that's reasonable, although as we envision this
8 system, it is not a staff heavy system. You
9 have some people who are capable of monitoring
10 performance contracts with the various players
11 in the system, of monitoring the system contract
12 which, essentially, would be your collections
13 contract. And, in fact, there is not a great
14 need, as we see it, to create -- that any agency
15 that should assume this responsibility should
16 need to go out and hire a ton of staff to
17 perform this function.
18 We do feel, however, that
19 whomever should assume this responsibility is
20 also going to need some time to answer a lot of
21 management questions that arise out of making
22 this kind of a change. We think that upon
23 designation, and, essentially, I think the way
24 we see this is that for now we continue with the

1 4D designations, take over with the 4D function
2 by a date certain so that agency could get a few
3 people on board to do the planning and
4 implementation steps that will be necessary. I
5 think it's important for us to come back to what
6 the 4D agency should look like in terms of its
7 powers and authority to manage the system, to be
8 accountable to the legislative, to the Governor,
9 to the federal government, in terms of the
10 distribution of funding and in terms of the
11 distribution of what we think is an extremely
12 important piece of this, which is the federal
13 insensitivity, that is built into this new
14 system, in which we think can be used very
15 effectively to manage the system, to provide the
16 other institutional players, and in the process
17 of the additional incentives to make sure that
18 the jobs get done and get done well.
19 Why don't I just stop there for a minute, in
20 case there are any questions. Then we can move
21 on.
22 MR. GEORGE KELLY: I think
23 that many of us have wrestled with the problem
24 of the 4D agency. I have often thought if you

1 did create something new perhaps it would be a
2 realignment of present players of the system
3 into a more streamlined body. I would just like
4 to hear anybody else who has any comments.
5 JUSTICE SAMUEL E. ZOLL: Why
6 do we have to change? What's the impetus for
7 change, other than maybe there might be some
8 generalized public professional dissatisfaction
9 with what the DPW is doing, and I don't say that
10 critically.
11 MR. WILLIAM CURITO: It goes
12 deeper than this. All of the players have
13 versus some problems with each of the players in
14 the system, and I think that not only are those
15 problems legitimate in many regards, and in many
16 instances, they also do not provide adequate
17 services to the people that will be using the
18 new systems. It's critical to us that what
19 happens on January 1st, presuming that we get
20 legislature passed by January 1st, is that we
21 don't have an announcement of these great
22 changes in child support enforcement, that, in
23 turn, nobody is responsible or accountable for
24 making sure it gets delivered adequately, and

1 the promise of what's going to change is more
2 than just the judicial system.
3 I think that's important. We
4 are looking at real concerns, not only that we
5 have but that other players have with the
6 collection process because it is fragmented and
7 it is a system that is unmanageable, at this
8 point, with enforcement questions, in terms of
9 information processing and so forth, and that we
10 as a Commission, who are, in fact, creating
11 these new systems, maybe in some instances not
12 so new, but at least we are making changes,
13 substantive changes, should take this
14 opportunity to address this issue because,
15 otherwise, we don't think that the promise that
16 is going to be held out to people in terms of
17 what to expect, in terms of child support
18 enforcement situations, will be delivered on,
19 and it is just vitally important to us as 4A,
20 that we are looking at down the road in terms of
21 converting some of those child support
22 collections to income in terms of poverty and
23 everything else that we are looking at, that it
24 is important that this system function

1 efficiently, that there are clear lines of
2 authority, that somebody is held accountable and
3 it's not fragmented.
4 MR. WILLIAM O'LEARY: I think
5 what we have just heard from Bill in a very
6 articulate and well reasoned presentation is
7 very unique in my experience as a public servant.
8 We have here a department out of the concern
9 that the job be done in the best possible way,
10 offering its elimination of performance of a
11 particular function, and I think that the
12 Department of Public Welfare should be listened
13 to very, very closely. They have been the 4D
14 agency for the state of Massachusetts for a long
15 period of time, and if they are coming around to
16 a position and saying consider alternatives, in
17 the interest of doing the job in the best
18 possible way, I think that at least
19 consideration of the alternatives has got to be
20 the rest response of anyone to what they're
21 saying.
22 With reference to the various
23 possibilities that Bill articulated, I have the
24 pleasure of being an officer in the National

1 District Attorneys Association, and through that
2 activity, I have contact with prosecutors
3 throughout the country. I am aware through that
4 mechanism of a number of states where the
5 attorney general is the 4D agency and a number
6 of states where the prosecutor's office is the
7 4D agency. I don't know that this here now is
8 the time to get into moderate detail on it, but
9 let me make a couple of observations.
10 I had appeared before a
11 subcommittee. I forget the title of the
12 subcommittee, but a subcommittee that was
13 dealing with the subject matter, along with
14 Kevin Burke from the District Attorney's office
15 in Essex County, and I had as well the pleasure
16 of an opportunity to speak with yourself and
17 Connie Williams about the same subject matter.
18 I think that the attorney general is a distinct
19 possibility and that deserves a lot of
20 consideration. Assuming an interest on the part
21 of the Attorney General's office, it has the
22 obvious advantage of representing a single
23 agency, a state-wide franchise.
24 The Attorney General's office,

1 however, in not present on a day-do-day basis at
2 this time in all the communities of the
3 Commonwealth or in all of the courts of the
4 Commonwealth. It has a distinct advantage, and
5 it has that disadavantage. District attorneys
6 are present in the communities, have offices,
7 have support staff, have copy machines and all
8 that goes with it. We are an enforcement agency,
9 that is what the District Attorney's office is.
10 Several years ago, initially,
11 one year through the Department of Public
12 Welfare and then thereafter, directing our own
13 budgets, most of the DA's offices have gotten
14 active in the area of child support enforcement.
15 It may be too early in some ways to measure
16 exactly what the impact of that has been.
17 Subjectively looking at it, I think it has been
18 very successful, at least as to some of the
19 issues, the non-payment of a valid order of
20 support that's been in effect, and to the use of
21 a criminal process. That's what we do. We have
22 the relationships with all of the local police
23 departments we have the relationship with the
24 sheriff's office in Plymouth County, working

1 with the Department of Public Welfare.

2 We have been very aggressive

3 in going out and enforcing default monsters in

4 that travel around in the system, without anyone

5 doing anything about them for a period of time.

6 The Department of Revenue is a new one. It's

7 worthy of a look. I make one last suggestion

8 and then fall silent.

9 With regard to the courts and

10 the friend of the court system as used in a

11 number of states, and we look at that in the

12 Guidelines Subcommittee, I think that it's

13 important to maintain some separation of powers

14 in this general area. We have very

15 appropriately substantial judicial involvement

16 in selection and supervision and review of the

17 workings of the Masters. We have the court

18 obviously directly involved in appeals. I think

19 that separation of powers is a concept that has

20 a great deal of history behind it and some

21 pretty strong reasons for being appropriate.

22 MR. JOHN BLODGETT: I think

23 that we may be getting off onto an area that we

24 might not actually be ready for or even should

1 think about at this time. I think the issue, as
2 I see it, is not who the 4D agency should be or
3 where the 4D should rest but what should the
4 powers of the 4D agency be, what kind of
5 authority should the 4D agency have. I think
6 that once those issues are worked out, then I
7 think we could best Judge where and how and
8 where the 4D agency should rest, and I think the
9 Committee should try to concentrate on what the
10 powers of the 4D agency should be.
11 MR. WILLIAM CURITO: I would
12 agree with that.
13 MR. BARRY WALKER: I was
14 going to suggest two things. First of all, I
15 concur with the comments about the Department of
16 Public Welfare. It has done a marvelous
17 performance and is to be commended. Secondly, I
18 wonder when that consultant's report is due,
19 whether or not that consultant's report will be
20 made available to somebody, so that in
21 conjunction with these remarks, we could say we
22 need a strong 4D agency. It shouldn't, perhaps,
23 be a present player in the game at all. It
24 should perhaps be somebody within the Executive

1 Department of the Commonwealth, contracting out
2 with the DA's, perhaps with a private agency,
3 perhaps, or the Department of Revenue, perhaps,
4 but I think we ought to defer decisions with
5 regard to who or the specifics of who, until
6 such time as the consultant's report is filed
7 and we know what we're doing, because right now,
8 I think it would be foolhardy for us to try to
9 assume that we know enough to even talk
10 intelligently.
11 MR. JON LARAMORE: I just
12 want to ask for a clarification from Bill about
13 what you're saying in terms of these other
14 possibilities. Is it my understanding that
15 you're saying that we should be looking at these
16 possibilities, along with the Department of
17 Public Welfare (inaudible) or that you are not
18 just not interested in doing anything for some
19 interim of time?
20 MR. WILLIAM CUPITO: In terms
21 of what Joe said, in looking at the function of
22 the 4D agency, rather than who it should be
23 first. It's clear to me in my discussions that
24 people's responses and reactions to how the 4D

1 agency would look is colored by the view of who
2 that 4D agency would be. Currently, the only 4D
3 agency in the state is the Department of Welfare.
4 And so far there has been little or no focus on
5 that by this Commission. We've been 4D by
6 default, essentially. We have no interest in
7 continuing to be 4D by default. We don't think
8 it's in the best interest either by the
9 Department or the people that are supposed to be
10 served by the 4D system, but it's clear to us as
11 well, that in terms of reaching some consensus,
12 that a strong 4D agency is what we all want to
13 talk about, that we had to remove ourselves from
14 consideration, as well as, as I said, there were
15 other considerations than went into this, and
16 that happens to be in just the magnitude of the
17 job that we currently do in terms of AFDC and
18 other areas, and it's more important, especially,
19 if you look at our budget. If you look at our
20 budget, each year, the legislature appropriates
21 a certain amount of money for AFDC, and then
22 over and above that, we spend anywhere from $50
23 to $60 million over and above the amount
24 appropriated to child support collections. So

1 we have a budgetary concern that the 4D agency
2 will be strong enough to collect that money
3 expeditiously and get of over to us
4 expeditiously.
5 In addition do that we also
6 provide the first $50.00 of support collected in
7 any given month to go directly to any AFDC
8 recepient for whom the support order is not
9 large enough. It's important that all of the
10 enforcement and other processeses work well so
11 that we can get those folks that money. Then
12 the third thing is to get more of that money
13 directly to people, and we just think that we
14 have enough to do, Number 1, and Number 2, we
15 couldn't get the strong system that's necessary
16 to get the job done. I would like to just pass
17 this out to the people who begin to get an idea
18 of what a strong 4D system as we envision it
19 would look like. We have also prepared, very
20 quickly, we had asked a couple of our people to
21 sit down and say okay, we are creating a new
22 child support system that's going to incorporate
23 Masters, 4D, what are the questions that have to
24 be answered and decided upon. When they looked

1 at this, they went right into the issues of
2 Master. A lot of those questions we have
3 answered, a lot of the questions that a strong
4 4D agency would have to answer, remain, and we
5 think that's the need. Let me pass this out
6 first.
7 JUSTICE SAMUEL E. ZOLL: So
8 not to minimize the importance of this issue, I
9 think Barry's point was very well taken, and I
10 share his thinking. I am very equipped without
11 having the benefit of professional consultation,
12 so I would move that we defer any further
13 discussion on this matter and go into another
14 issue, described substantive issues, which I
15 think at the moment our primary responsibility
16 is to deal with the guidelines and defer action
17 on this 4D agency.
18 MS. CONNIE WILLIAMS: Just one
19 point of clarification, it is not totally by
20 default. One must remember that in the '70's
21 the federal government moved aggressively to
22 have child support and AFDC tied together under
23 federal legislation; that the department of
24 public welfare and child support have been

1 inextricably bound together because of the AFDC
2 grant. I mean it's not default ---
3 MR. WILLIAM CURITO: I agree.
4 We agree that they are linked, but the link is
5 not in a sense the performance of thge function,
6 that is where I think we need to bow out of the
7 process.
8 MS. RUTH ARLENE-HOWE: Just
9 before immediately closing out on this
10 discussion, I am a little bit concerned that at
11 this round table not having yet heard any clear
12 articulation what those strong functions ought
13 to be. Now, Number 1, it seems to me, in the
14 area of services, we really have got to have
15 something in place that's going to mazimize the
16 distribution of information to the public at
17 large, and so that to me is a critically
18 important thing. The next thing with regard to
19 enforcement, you have got to have something in
20 place that is going to easily link up with
21 non-working within the system in a way that's
22 not going to maximize expenditures for staff.
23 It's got to be something in place that is going
24 to be a fairly automatic. The other thing it

1 seems to me we are in the area where maybe we
2 have to think about an open recreation of a new
3 structure that serves kind of as a clearing
4 house -- a coordinator who sits over this to
5 make sure all the existing (Inaudible).
6 MR. WILLIAM RYAN: I think we
7 are still not looking at the whole picture. I
8 hear about enforcement, I hear about service. I
9 think one of the foremost things is that whoever
10 is designated the 4D agency, that it have
11 absolute committment to give the resources that
12 are needed to run the program. People look at
13 enforcement; they look at the court; they look
14 at services; they look at DPW. What we need is
15 maybe just an administrative structure that has
16 the ability to administer the contracts to make
17 sure that services are provided and make sure
18 that that agency is not competing with with the
19 fragments of other parts of the system for
20 dollars, I and I think that's what should be
21 talking about. That this agency, whoever it is,
22 have the power to administer, to enforce and
23 provide services for the people that we are
24 talking about.

1 MR. JON LARAMORE: As far as
2 I have been able to tell administered out of
3 central -- very small office, just two or three
4 people in it that do contract coordination, that
5 might be the kind of way ---
6 JUSTICE SAMUEL E. ZOLL: I
7 would like to expand slightly upon the idea -- I
8 am sure my colleagues in this Commission -- this
9 is, as I view it, is a highly technical
10 management issue not a legal issue, it's not a
11 phylosophical issue, it's a highly technical
12 managerent issue, which, in my judgment, does
13 not belong around this table unless it had the
14 benefit of the best possible staffing. While we
15 all have individual ideas as to what ought to be
16 done, frankly, they are not grounded in my
17 judgment on any extensive administrative
18 experience; none of us comes to that issue with
19 you, with that kind of technical backround issue.
20 It seems to me that we ought
21 to have, and I don't know whether the Commission
22 is funded to do this, but the study you say is
23 being completed and some staffing so that we
24 have some position papers on all of these issues

1 rather than just everybody's individual opinions,
2 and then we can make a determination as to which
3 direction we are going. I just -- this is not a
4 legal issue, and I think I have had a little
5 administrative experience, and I feel I am
6 equipped to make a judgment. I see merits on
7 both sides, but this whole thing is floating.
8 MR. WILLIAM CURITO: Let me
9 just say, Judge Zoll, to a certain extend I
10 would agree with you except that this Commission
11 is made up of a wide variety of people. We have
12 just finished dealing with some very technical
13 and complex legal issues. This issue is no
14 different. This is a complex issue. There are
15 certain complex management issues that are
16 involved, and in 4D's administration. The
17 concept of a strong 4D agency, however, is very
18 simple, and it's grounded very definitely in
19 what the system, as currently comprised looks
20 like, versus what in fact is going to be the
21 most effective way to run the system from this
22 day forth. It does not -- I don't think it is --
23 while there are some very detailed management
24 questions which must be answered by the 4D

1 agency, this Commission is perfectly well
2 equipped. I would addresses this issue in the
3 context of the legislature that is being
4 proposed. These issues are in the legislation
5 that's currently before the committee. These
6 issues must be focused upon. We have direction
7 from Hugh Galligan who says that while we
8 focused on the new federal issues that are
9 raised, there are outstanding old ones, and one
10 of the outstanding federal issues is the fact
11 that we have not yet legislated a 4D agency.
12 We don't have -- I am afraid the luxury of the
13 time to make for this Commission. To not make
14 some basic policy statements to the legislative,
15 to guide them in the deliberation of this
16 particular issue. I think it's important if we
17 do this.
18 JUSTICE SAMUEL E. ZOLL: With
19 all due respect, this isn't enough in my
20 judgment. You have been very articulate ---
21 CHAIRPERSON CATHERINE DUNHAM:
22 Let me just interrupt. We have six minutes
23 until we go to guidelines. I think the point
24 that bill is making, bill correct me if I am

1 wrong, is that the Commission can make a
2 recommendation about the strenght of the
3 authority and the importance of the process that
4 will arrive at designating the 4D agency. No
5 more than without further consideration it's the
6 next step for this Commission to look at once we
7 got the consultant report, but for the
8 Commission to be silent on the issue in terms of
9 the importance of that agency being central of
10 any other recommendation is what I believe is
11 being suggested.
12 MR. WILLIAM CURITO: It only
13 goes further to what Cathy has outlined there.
14 There are three segments to 4D. What is not
15 clear either in the legislation that's currently
16 before the Senate Ways and Means Committee what
17 has to be clear is whether or not this
18 Commission is going to take the step of
19 supporting the consolidation of those three very
20 distinct and important functions with full
21 authority and Bill indicated, with full funding
22 capacity to manage those three functions as
23 opposed -- and I think this is where the whole
24 issues of people's individual experience is

1 coming to bear here -- as opposed to the current
2 system which is fragmented. We have probation
3 monitoring cases and collecting money. We think
4 that's inappropriate. We have the Department of
5 Public Welfare doing the same. We think that's
6 inappropriate. We have the enforcement being
7 done in some instances by the DA. We think that
8 in fact that this Commission goes on record as
9 saying that we recommend that the 4D agency
10 shall be given sole and exclusive authority and
11 funding to manage the 4D services, the 4D
12 enforcement process, and 4D collections, and the
13 reason I want to explain this is because I think
14 people might want to have an idea how can happen
15 without re-inventing the wheel, so to speak,
16 without a large outlay in terms of staff and
17 additional appropriation.
18 JUSTICE SAMUEL E. ZOLL: But
19 you can't make those preliminary determinations
20 unless you have -- What is the status of the
21 study?
22 CHAIRPERSON CATHERINE DUNHAM:
23 The first draft just came back to the Welfare
24 Department.

1 JUSTICE SAMUEL E. ZOLL: Why
2 don't we have that?
3 CHAIRPERSON CATHERINE DUNHAM:
4 I mean it just literally arrived yesterday or
5 today.
6 MR. JOHN BLODGETT: I am going
7 to be briefed on it next Tuesday.
8 MR. BARRY WALKER: May I make
9 a motion for a consensus and perhaps cut this
10 thing short. How about it is the sense of the
11 child support Commission that there is a need
12 for a strong independent 4D agency solely
13 responsible for all aspects of services,
14 enforcement, collections in connection with the
15 child support.
16 JUSTICE SAMUEL E. ZOLL: I
17 second that motion.
18 CHAIRPERSON CATHERINE DUNHAM:
19 Discussion.
20 MR. GEORGE KELLY: A couple
21 of lines to that that it's sensitivity to the
22 needs of the consumers of the system. Those
23 consumers would be both custodial, non-
24 custodial parents, and AFDC recipients and non

AFDC recepients.

MS. MARILYIN RAY SMITH: Children first on the list.

MS. SUSAN SCHUP: I want to make sure that there is consensus on that, and find out whether at this point that would preclude the subsequent selection of any one of the agencies which had been named.

MR. BARRY WALKER: It was designed in my motion to take welfare at its word.

MS. SUSAN SCHUP: I would certainly support anything that indicates our supports of a strong agency, but from the Judge's comments, we would not at this point make a judgment as to whether or not it should or should not be an independent agency. So if the maker of the motion were willing to amend his motion.

JUSTICE SAMUEL E. ZOLL: Take off the word "independent". The suggestion Susan made was because of the Judge's remarks about the lack of information to base a judgment

1 as to whether the agency should be independent
2 or dependent, and many of the options other than
3 welfare are dependent agencies.
4 MR. BARRY WALKER: I will
5 take it off.
6 CHAIRPERSON CATHERINE DUNHAM:
7 That you very much. I appreciate that. Any
8 other friendly amendments?
9 MR. FRANK ANDERSON: Cathy,
10 the committee reports outlines what has to be
11 done as far as the services committee the
12 enforcement committee. The only thing that
13 hadn't been mentioned here is providing equal
14 services to AFDC and non AFDC. Everybody must
15 be on equal basis. Everybody needs to be
16 involved in the process.
17 MS. SUSAN SCHUR: The basic
18 question in my mind in terms of process is
19 whether or not such a recommendation such as
20 this motion, goes to the Governor, and
21 ultimately it should be his determination of
22 which is the most appropriate agency. In
23 consultantion with us coming back to us with a
24 recommendation after the fact, or if that's

1 reversed if it should be in fact this Commission
2 making a specific recommendation to the Governor
3 or the legislature. The problem I have with our
4 recommendation is that ultimately whatever the
5 4D agency is it has to have the authority which
6 will come from legislation to coordinate various
7 branches of government, not just executive. In
8 terms of management expertise it seems to be
9 appropriate that government have the authority
10 to designate the manager, the 4D manager. That
11 has to be backed legislatively. I don't know
12 what you feeling is about process. My feeling
13 is that I would rather react to the Governor's
14 recommendation. I think we ought to make it
15 clear in our recommendation to the Governor
16 maybe it ought to be further amended that prior
17 to the selection or the termination of of a 4D
18 agency the Commission wishes to be consulted
19 about ---
20 MS. MARILYIN RAY SMITH: Can
21 we have a timeframe?
22 CHAIRPERSON CATHERINE DUNHAM:
23 Let me clarify the prosess. As I opened this
24 meeting today I wanted to extend the life of the

1 Commission for three months, specifically to
2 deal with implementation issues being 4D agency,
3 development designation, selection, whatever, so
4 that this group will be intimately involved in
5 the thinking -- I am not sure one of the
6 problems is that the vote is parting in terms --
7 we need to make sure we have the statutory
8 authority recognized in the law, at the same
9 time observing the prerogative of the executive
10 to find the best possible solution of the
11 management of the system any time. So my
12 timetable is three months.
13 MS. CONNIE WILLIAMS: Three
14 months from October 1st, right?
15 CHAIRPERSON CATHERINE DUNHAM:
16 Right.
17 MR. WILLIAM CURITO: I think
18 that this motion is critically important in
19 terms of the process. Arguably the Governor
20 should be making the decision as to where he
21 would recommend. I will agree it's his
22 prerogative to suggest, but I think in terms of
23 making that, giving the Governor his position to
24 make, whatever proposal he would like to make,

1 that he should suggest that the alternative
2 should be explored.
3 JUSTICE SAMUEL E. ZOLL: You
4 can't do that without a study.
5 CHAIRPERSON CATHERINE DUNHAM:
6 Return to the motion.
7 MR. JON LARAMORE: I think
8 they are only two amendments that we are
9 recommending a strong 4D agency, centralizing
10 collection. Services and enforcement of that
11 agency should be sensitive to the consumers of
12 the system including children, custodial parents
13 and non-custodial parents whether or not they
14 are on welfare or not, and that this agency
15 should provide equal service to AFDC and non
16 AFDC, and then within the next three months we
17 will make some recommendatons about either
18 elaborating on that or recommending a specific
19 agency, I guess.
20 CHAIRPERSON CATHERINE DUNHAM:
21 All those in favor?
22 (All in favor.)
23 CHAIRPERSON CATHERINE DUNHAM:
24 All those opposed?

1 (None opposed.)

2 CHAIRPERSON CATHERINE DUNHAM:

3 This is the recommendation to the Governor.

4 JUSTICE SAMUEL E. ZOLL: Move

5 the guidelines issue.

6 MS. CONNIE WILLIAMS: There

7 are extra copies of the guidelines.

8 CHAIRPERSON CATHERINE DUNHAM:

9 I want to divide this discussion both in terms

10 of time, and our thinking conceptually in terms

11 of time between two issues, one is the last

12 debate was over the content of the guidelines as

13 well as the process whereby those guidelines

14 will incorporated be into the judicial

15 administrative process. I think there had been

16 some suggestions about the process of -- I want

17 Marilyn to present the two issues separately

18 because I think in fact we will have difficulty

19 resolving the content issue.

20 MS. LEAH SPRAGUE: Can I ask

21 what our goal is, because I have some concerns.

22 I think that the guidelines are a highly

23 controversial subject, and there is no doubt

24 that ultimately we have to have two years from --

1 we are going to attempt in the next 45 minutes
2 CHAIRPERSON CATHERINE DUNHAM:
3 As I said there are two separate sets of issues.
4 One is whether or not the commission is going to
5 be able to recommend content guidelines by 3:00
6 today, and the second is the process which is of
7 equal importance, process whereby those
8 guidelines would have to be incorporated into
9 the workings of the the administrative judicial
10 system. I am confident we could do the second.
11 I am not confident we could do the first. I am
12 again turning to Marilyn Smith.
13 MS. MARILYIN RAY SMITH: What
14 I would like to do is go through several things
15 and then leave out to the Commission what
16 decisions the guidelines the committee would
17 like to have. There may be some things we could
18 do on substance as well resolve the question.
19 And what's going around, currently being
20 circulated are three items as I intended them to
21 be all of part one. One of the things that we
22 were asked to do at the the last Commission
23 meeting was do provide examples of the
24 committee's formula. That's what is in the

1 first package. I just want to give a brief
2 explanation. I don't think -- just let me
3 describe what it is that we try do show here.
4 To summarize, our formulas is a percentage of
5 both income where both parents facing the number
6 of children, the two percent credit to
7 non-custodial parent who provide medical
8 insurance, and to the custodial parent who
9 provided for payment. The cost of medical
10 insurance is deducted off the top of the
11 non-custodial parent's income. The custodial
12 parent provides a cost of daycare and that
13 daycare cost is deducted off the cost of the
14 gross income before you could apply the
15 appropriate percentages.
16 In the example we try to
17 illustrate the net effect of the child support
18 payments to each parent after the payment
19 attaches medical insurance and child support of
20 non-custodial parent, and after the payment of
21 taxes, daycare, and receipts of child support
22 and the custodial parent, and then at the bottom
23 of each example the two households are compared
24 to the poverty level of the mid sized unit and

1 the family structure unit is set where the non-custodial
2 parent's income remains constant, the custodial
3 parent income goes up. So that you see the
4 impact of the employment of the custodial
5 parents's income. Those examples illustrate
6 different numbers of children and different
7 ranks of income and accompanying daycare cost.
8 Another one is the sheet that's being passed
9 around is a fact sheet, is the cost of daycare
10 in greater Boston which I am told by daycare
11 experts it's fairly typical statewide.
12 The other sheet that you are
13 getting gives the information on the poverty
14 level figures on different size of households
15 in 1985, as well as the most recent information
16 from the Census Bureau that I was able to get a
17 hold of, which shows you the distribution of
18 income from Massachusetts-alone family list.
19 One of the things that you notice on that sheet
20 is that at least in 1979 the combined income of
21 over 80 percent of families in Massachusetts was
22 under $50,000.00, and the other thing that you
23 can note on that fact sheet is that when you
24 compare the income of household for children to

1 the income of married couple of household of
2 children you see the dramatic difference for
3 female households with children. This for
4 children under the age of 18 the income is less
5 than a third of the married couple counterpart.
6 the earning is more dramatic. When you are
7 looking at the penalty negligence, that
8 household income is less 25 percent of a
9 comparable married family with children under
10 the age of six. So those are there for your
11 review and consideration.
12 We will be more than happy
13 to either discuss individually or to meet at a
14 later date. One of the other things that we
15 ask you to look at was whether there should be a
16 cap at the upper income level. Should cases or
17 should starting amount of income above a certain
18 amount be exempt from guidelines? We reviewed
19 that question and concluded that a cap is not
20 advisable since cap is sub to changes due to
21 economic changes. We thought we better leave
22 the upper income cases to be reviewed by the
23 Judge. There would and emphasis for providing
24 and the cost of higher education and to make

1 sure that there is consideration of looking at
2 the standard of living of the child.
3 Now, one of the things that
4 we want to emphasize in our review of the cost
5 of children, we found that the cost really is a
6 income that the more resources that are
7 available the better educational opportunities.
8 There are more guarantees that the children will
9 be able to share in the standard of living of
10 both parents. This is one of our goal.
11 I think it's example Number
12 10, it's an example where daycare cost. In this
13 committee's formula we recommend that the
14 parents sit down and begin to plan for higher
15 education so that money may be able to be set
16 aside to higher education.
17 We also reviewed the
18 possibility where there is great disparity
19 between incomes. Another thing, the Commission
20 asked us to be more specific about the question
21 of custody than visitation, and in reviewing
22 that question again, the committee renewed
23 absolute committment to frequent contact between
24 the child and the non-custodial parent, and that

1 visitation should be encouraged and enforced,
2 but in no events should visitation and child
3 support be connected. The child has an
4 independent right to both parents.
5 We wanted to clarify the
6 difference between joint legal custody and
7 shared on joint physical custody because this
8 there is some confusion at the last Commission
9 meeting. Joint shared legal custody is quite
10 common in Massachusetts and both parents are
11 involved in important decisions concerning the
12 child. However, the primary residence is with
13 one parent, the custodial parent. There are
14 direct expenses that the custodial parent makes
15 by may of providing for housing, clothes, and so
16 forth. We picked a 30 percent visitation
17 pattern that's assumed under this standard
18 guidelines approach, in most cases the
19 visitation will be substantially less. When we
20 turn to visitation over 30 percent, again the
21 recommendation of the Commission -- we went back
22 and looked at that formula, and we concluded
23 that it was very difficult to structure a
24 formula at that point and those cases are really

1 better dealt on a case by case basis. We assume
2 there would be a high degree of involvement on
3 the parts of both parents on expenditures for
4 the child, and that any of the options that are
5 creating the formula are really not satisfactory
6 and really end up having an unfair burden on one
7 parent or the other. We wanted to do make it
8 clear this should not be an assumption that the
9 child support payments is to reduce the
10 percentage of time that the parent spends with a
11 child. It's very often that time is divided
12 50/50, that one parent is still primary
13 responsible for making purchases of clothing and
14 so on. Also to make very clear, to make 50/50
15 custody, that unless both parents have the same
16 income and both parents are sharing all expenses
17 associated, that this should be handled by child
18 support payments.
19 Just by way of background
20 shared physical custody cases, according to the
21 Bar Association, were around five percent of the
22 case size. We are not talking about a
23 substantial number of cases. Shared physical
24 custody works best when there is great deal of

1 cooperation between the parents in working out
2 an equitable financial arrangement.
3 The last thing, and I think
4 the first thing we ought to address is the
5 question of implementation -- before I got to
6 that, what I would like to before I get to
7 implementation, with regard to substance, what
8 the committee would ask from the Child Support
9 Commission is rather than go through analysis of
10 numbers, unless the Commission is willing to
11 devote a great deal of time to some highly
12 technical documents, is that the Commission
13 adopt in its report to the Governor the list, a
14 criteria of guidelines that we set forth. That
15 we set forth in our report starting on Page 2.
16 It's Point 1 through 8, which indicates the type
17 of principles that a good set of guidelines
18 should be based on.
19 CHAIRPERSON CATHERINE DUNHAM:
20 All those in favor?
21 (All in favor.)
22 JUSTICE SAMUEL E. ZOLL: I
23 think we ought to move the question on
24 implementation while we still have everybody

1 here.

2 MS. MARILYN SMITH: Okay. On

3 implementation, Judge Flynn and I met with

4 assistant to Judge Mason, trial court justice,

5 (inaudible.) To appoint a committee to establish

6 child support guidelines in accordance with the

7 applicable state and federal laws, and that

8 committee should consist of representatives from

9 the Child Support Commission and other

10 interested persons. We would also suggest that

11 it would be appropriate, given the creation of

12 this system, that there would be a date of which

13 these guidelines would be promulgated well in

14 advance of the October 1, 1987 deadline,

15 because the Master System, I think, is not used

16 appropriately and the Masters cannot function

17 without guidelines, and that in the interim,

18 guidelines be promulgated by this committee as

19 soon as the Masters begin functioning, so that

20 they are not at any time functioning under a

21 system that doesn't have direction to these

22 child support orders.

23 In addition, there's been a

24 recommendation that these committees that review

1 these guidelines, undertake a multi-disciplinary
2 approach. Just finally, on the question of the
3 impact on the guidelines, they would be used
4 presumably by the Masters. We had some
5 conversation with Henry Bross (phonetic), and he
6 is proposing a set of rules that the Masters
7 would have to offer, and these include
8 guidelines. The discussion that we have had
9 earlier ---
10 UNIDENTIFIED SPEAKER: WOMAN
11 There is more solid methodology in that report
12 than in anything else that we've done. There's
13 less guessing and there's more to rely on as
14 people move forward to set guidelines.
15 I would like to insure that
16 this carries on, and I like the way that you
17 have suggested, that this Committee set up a
18 multi-disciplinary committee, but with my usual
19 caution, since we are not legislative guidelines,
20 and since I am just as happy not to have to
21 argue with those percentages, I would
22 nevertheless like for us to set the framework
23 within the legislation for the establishment of
24 guidelines, and that is to say something

1 legislatively, which is the intent of the of the
2 Commission, so we're locking in legislative
3 intent to look out for the best interests of the
4 children, the notion of the distribution of the
5 resources of parents, the notion that economic
6 and sociological studies shall be brought into
7 consideration in the establishment of
8 guidelines.
9 I would like to see that in
10 the legislation, and I would also like to see
11 provision in legislation for the appointment of
12 a committee that establishes the guidelines,
13 much as we have done in the Master system, the
14 same kind of thing. I as a politician am saying
15 that I would like the selection of a committee
16 and the determination of the guidelines to be as
17 a political process as it could possibly be,
18 and, therefore, I would like to put before you,
19 not in the form of a formal motion, but a
20 suggestion add-on to this, that we perscribe a
21 Committee under the chief administrative
22 justice, whose membership can be laid out
23 similarly to the Master system, with the same
24 kind of things that we tacked on, representing

1 the interest of the consumers, representing all
2 of the disciplinary approaches, determining the
3 term of the members of that Commission, because
4 there are going to be needs to revise those
5 guidelines, and also the appointing authorities.
6 We raised the question and
7 didn't resolve it when we talked about the
8 Masters Committee, and we have the same
9 question, as far as I am concerned here. I
10 would like to see that not all in one person,
11 the appointing authority.
12 UNIDENTIFIED SPEAKER: I just
13 do not feel all the points are fair. I won't go
14 into it, but until they start getting equal
15 distribution of custody, and especially in
16 requested cases, I think there is a lot of bias
17 involved as to the custodial and non-custodial
18 parent, and I think that we are still addressing
19 the mother's issue versus the father's issue in
20 a lot of the areas.
21 I go along with the
22 recommendation to have the chief justice have
23 that committee and to develop the guidelines
24 with that representative assurance and

representations from all people. I think that's very important. I would like to see that motion amended in the form of bringing it into the legislature at that time for their input into it and to enact it as a law. To reverse it instead of the legislature giving the judicial branch authority to create guidelines, I, myself, would like to see it reversed and have the judiciary recommend guidelines for legislation.

CHAIRPERSON CATHERINE DUNHAM: I think that's sort of unlikely, but that's a suggestion by him.

NEW SPEAKER: I started off as believing that the legislative approach was the best, and I was persuaded from that, and very briefly, some of the reasons that did move me in the direction of what the subcommittee's recommendation was has to do with first and foremost what Marilyn says. We are going to have Masters in existence before the guidelines are required to be adopted. If we go to the legislative rules, we are guaranteeing a long, time consuming process just because of the complexity of this subject matter.

1 The appropriateness of going
2 to the rule-making power of the Court and
3 involving the judges, I think, is obvious. The
4 judges are going to play a most important role
5 and the application of the guidelines is
6 important to have input. It leaves us with a
7 system that can adopt guidelines with broad
8 input from consumers, from the judges, from
9 everybody who should have input. It leaves it
10 more flexible to amend, as our experience leads
11 us to conclude it should be amended. I think
12 that at lot of thought and care went into
13 drafting the recommendation the guidelines
14 committee adopted that Marilyn just explained.
15 MR. GEORGE KELLY: I have
16 listened intently to all the positions that
17 should have been changed. I have today with me
18 limited copies and it is just a question of time,
19 you know, maybe I could provide more copies
20 later. I have the standards that have been
21 adopted legislatively out in California and the
22 law and statute that follows those, and I took
23 the liberty of already giving Judge Zoll a copy,
24 and I will make copies available to you.

1 I also have in Connecticut the
2 Committee has adopted some guidelines. I think
3 that it's easy for any of us from our own point
4 of view to look at the guidelines. It may be
5 the biggest piece of work we're called on to do
6 as a Commission. It probably is, and probably
7 the most far reaching. It may reach beyond the
8 lifetime of anybody sitting around this table
9 and so I think we have to approach it with a
10 good deal of caution. I think, traditionally,
11 there have been some things operating in the
12 custody-support-visitation system, that have not
13 been good for anybody, especially the children.
14 I think we have to be mindful that we are an
15 Equal Rights Amendment state. I think we have
16 to be mindful that we need to put light burdens
17 on parents, whether the parents be female or
18 male.
19 I think that we have to see
20 that all children are supported reasonably with
21 some problems with having children of one
22 marriage supported very sparsely and children of
23 another marriage supported very lucratively. I
24 think that a lot of the premises that we have

1 drawn are made to prove the amelioration of this
2 whole system of how people separate, and what I
3 am talking about, the Divorce Commission is
4 talking about amelioration. We have made some
5 substantive changes in the laws in the last few
6 years. I think we have to see that support goes
7 to children, not the parents. The child's needs
8 continue whether the child is with one parent or
9 another. I am not sure completely that we have
10 addressed that issue as well as it should be
11 addressed. I'm not sure we have addressed it
12 completely when we are talking about
13 non-custodial parents, and think the problem
14 here is two judges belong to that group. I might
15 be wrong.
16 When we are talking about
17 non-custodial parents, I think we are talking
18 about a group that is mainly made up of men. I
19 think when we are talking custodial parents, we
20 are talking about a group mainly made up of
21 women. I think some people would say there is
22 some systemic bias in those rules, but whatever
23 the case may be, I think we have to put an equal
24 burden on everybody with equal rights for

1 everybody. In that light I think it may be
2 premature at this time to say whether those
3 should be developed by the judiciary or by the
4 legislature. I think we need to take another
5 look at it.
6 CHAIRPERSON CATHERINE DUNHAM:
7 That's one perspective and, obviously, the issue
8 will continue to be examined from a legislative
9 prospective, as well as the motion carries a
10 judicial prospective. Anymore discussion on
11 this?
12 MR. JON LARAMORE: I would
13 call the question.
14 JUSTICE SAMUEL E. ZOLL: What
15 is the question?
16 MS. SUSAN SCHUR: Is there any
17 way that we find out if the committee wishes to
18 have the membership of that committee ---
19 MR. JON LARAMORE: The
20 subcommittee does.
21 MS. SUSAN SCHUR: This
22 Commission is about to vote on that
23 recommendation.
24 MR. MARC PERLIN: What it now

1 says is that the Committee will consist of
2 representatives from the trial court, from the
3 Trial Court Commission, created by executive
4 order dated January, 1985. And other interested
5 perform it doesn't specify its size. It doesn't
6 specify numbers. I talked to many, many people
7 about this from the inception of Guidelines
8 Committee about what -- there is npo question in
9 my mind that the court hasn't had authority to
10 develop guidelines, whether they are called
11 standard guidelines, or whatever, but the courts
12 have that power to sets forth, particularly when
13 we're dealing with circumstances, rules
14 governing how Masters function.
15 The problem with having the
16 Commission doing it is that there is no inherent
17 authority in the Commission to do anything
18 except to make a recommendation. The
19 legislature could do it, but it is an intensly
20 complex and technical subject, I can tell you.
21 It takes hours and hours to grasp the
22 substantive materials about numbers and factors
23 and the charts, and I have literally a table
24 full of material and charts that have been

1 developed. And so unless this Commission --
2 first of all, the Commission went through that
3 and ended up with the same result, and the
4 Guidelines Committee still doesn't have the
5 authority to have the judges do it, and I don't
6 see how the legislature can possibly undertake
7 anything but the crudest possible system.
8 MS. SUSAN SCHUR: I agree with
9 you, which is why I am not suggesting that.
10 MS. SUSAN SCHUR: My question
11 is whether I can get assent or whether the
12 Commission wishes to express assent or whether
13 the Committee, which is going to be developing
14 and recommending to the Judge, should have its
15 membership and purpose described in the statute,
16 not whether the legislature should begin to
17 consider that.
18 MR. BARRY WALKER: It has to.
19 The legislation has already established a
20 Committee for the appointment of Masters. We
21 set up a rather stringent formula for that
22 committee. The same kind of language should be
23 appropriated in the appointment of the
24 Commission, which will study and implement the

1 guidelines.

2 CHAIRPERSON CATHERINE DUNHAM:

3 I need a vote on whether or not ---

4 JUSTICE SAMUEL E. ZOLL: Move

5 my question, Madam Chairman.

6 CHAIRPERSON CATHERINE DUNHAM:

7 The motion is as Marilyn has stated. All those

8 in favor? All those opposed? So noted.. The

9 motion passes. Two opposed and 13 in favor.

10 CHAIRPERSON CATHERINE DUNHAM:

11 As to the subcommittee recommendation, and then

12 we will deal with Susan's issue. All those in

13 favor?

14 (All in favor.)

15 Now, the issue of whether or

16 not the recommendation of the Commission should

17 be reflected in the statute.

18 MS. MARILYIN RAY SMITH: The

19 question -- I think your question is do you want

20 a more specific enumeration of the Committee

21 member than ---

22 MR. BARRY WALKER: The size,

23 the sources of they're appointment, where

24 they're from, the fact that they should be

1 consumer represented, the whole deal all over
2 again, and you ought to limit the number and the
3 term.
4 MR. WILLIAM RYAN: One other
5 thing that should be included, which is a date
6 certain, which I would suggest since we don't
7 have a pre-knowledge of when this is going to
8 pass, and when it's going to be effective, that
9 we say within, say, 180 days of the passage of
10 this bill, which could be six months. Also, I
11 think we want to include the criterion as
12 guidelines.
13 MR. MARC G. PEPLIN: That's
14 going to go into legislation.
15 MS. SUSAN SCHUR: What I was
16 suggesting was some statement of what we are
17 telling the legislation, it should be the
18 legislative intent. It becomes clear that the
19 factors are not simply case precedent but the
20 other factors as well.
21 MR. WILLIAM CURITO: On the
22 timing of promulgation by which we have
23 guidelines, let me suggest that it be tied
24 rather into a number of days or a day prior to

1 the implementation of the Masters.

2 JUSTICE SAMUEL F. ZOLL: I

3 want to commend the Chairman for running such an

4 expeditious meeting.

5 CHAIRPERSON CATHERINE M. DUNHAM:

6 We have seven minutes left.

7 MS. MARILYIN RAY SMITH:

8 Before we leave, I would like to make a motion

9 that the recommendation of the committee be put

10 in the form of legislation as to the composition

11 and purposes of the guidelines committee.

12 CHAIRPERSON CATHERINE DUNHAM:

13 All those in favor

14 (All in favor.)

15 CHAIRPERSON CATHERINE DUNHAM:

16 Thank you very much.

17 (Whereupon the meeting

18 adjourned.)

19 -

20 CERTIFICATE

21 I, Armos Eyal, Registered

22 Professional Reporter and Notary Public in and

23 for the Commonwealth of Massachusett do hereby

24 certify that the foregoing record is a true and

accurate record of my stenographic notes taken in the aforementioned matter to the best of my knowledge, skill and ability.

ARMOS EYAL, RPR